



Appeal Decision

Site visit made on 23 June 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Appeal Ref: APP/L5240/W/22/3309977

143 Brigstock Road, Croydon CR7 7JN

- 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 A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order).
 - The appeal is made by Mr M Bhatti against the decision of London Borough of Croydon.
 - The application Ref 22/01231/GPDO, dated 22 March 2022, was refused by notice dated 16 May 2022.
 - The development proposed is the construction of two additional storeys to provide six self-contained flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form states that the proposed development is for the construction of two additional storeys to provide two self-contained flats. It is, however, clear in the plans and the evidence that the proposed development is for six self-contained flats. I have determined the appeal on this basis.
3. Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order), 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, together with, amongst other things, engineering operations reasonably necessary to construct the additional storeys and new dwellinghouses.
4. Development is not permitted by Class A if, amongst other things, the engineering operations that are reasonably necessary to construct the additional storeys and new dwellinghouses, would consist of engineering operations other than works within the existing curtilage of the building to, amongst other things, strengthen existing walls.
5. As detailed within the Order, development under Class A is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval. The local planning authority may refuse the application where it considers that the proposal does not comply with the limitations or restrictions that are applicable to such permitted development.

6. The provisions of the Order require the local planning authority to assess the development proposed solely on the basis of a limited number of considerations. The Council consider that the works involved in the proposed development would exceed the limitations of Class A. The Council also refused to grant prior approval due to concerns in respect of transport and highway safety matters and the effect of the development upon the external appearance of the building. I therefore consider these to be the main issues in the appeal.
7. Development plan policies and the National Planning Policy Framework (the Framework) can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters. I have proceeded on this basis.
8. On the 25 July 2022 the Council revoked their Suburban Design Guide Supplementary Planning Document 2 (SPD2). This document, as referred to in the Council's decision notice, therefore has no weight in the appeal.

Main Issues

9. The main issues are whether prior approval should be given, having particular regard to 1) the limitations of Class A, 2) the transport and highways impacts of the development, and 3) the resulting external appearance of the building.

Reasons

Whether the proposed development exceeds the limitations of Class A

10. The Council considered that the proposed development complies with all the relevant Class A restrictions save for the restriction set out in paragraph A.1.(b), that being that development is not permitted by Class A if, above ground level, the building is less than 3 storeys in height.
11. The Council consider that the second floor of the building was formed within its roof-space and therefore does not count as a storey. The Order outlines in the Interpretation of Part 20, paragraph C.(2)(b) that references to a "storey" do not include any accommodation within the roof of a building, whether comprising part of the original building or created by a subsequent addition or alteration. The pertinent matter is therefore whether or not the second floor constitutes accommodation within the roof of the building.
12. The appeal building comprises residential properties over 3 floors. The ground and first floor are clearly defined with vertical brick external walls. The second floor has external tile cladding and the building has a flat roof.
13. The evidence sets out that the appeal building was granted planning permission in 1982 for the 'erection of three storey block to form nine flats'. Although the Order defines a 'storey', no such definition is given for 'roof'. The evidence sets out that the Oxford English Dictionary defines a roof as 'the external upper covering of a house or other building'.
14. In the appeal building, the tile hanging feature appears as an entirely aesthetic feature and not a structural part of the building. The building was built as three storeys, and at no point has there been a roof conversion. The third floor is of full height and the tile hanging feature is almost vertical. The appellant's evidence sets out that were this part of the building removed, the building

would still have a full roof covering and external wall, with the third storey sitting beneath a full covering and separate flat roof.

15. Therefore, even if the visual intention of the building is for the third storey to appear as a mansard roof, for the reasons given above it does not constitute accommodation within the roof-space of the building. Therefore, based on the evidence before me, I conclude that the building is not less than three storeys and therefore the proposed development would not be contrary to the restriction as set out.

Transport and highways impacts

16. The appeal building is located on Brigstock Road which has the appearance of a secondary distributor road and includes bus stops. I observed a moderate level of traffic and moderate levels of on-street parking during my mid-morning site visit.
17. The proposed development would result in the addition of six self-contained flats. The appeal building has land to the rear that is used for off-street parking. At the time of my visit there were 6 cars parked in the area. Of these vehicles one appeared to be 'stored' as opposed to 'parked', and one was blocked by another vehicle. Nevertheless, I estimate that around 6 to 7 vehicles could park independently. This is in addition to the block of six garages which could also be used for the parking of vehicles.
18. The appeal property has a PTAL (Public Transport Access Level) rating of 4 which is relatively high. I observed that the site is relatively well connected by public transport. Unrestricted parking is also available on Brigstock Road.
19. On the matter of transport and highway impacts, the Council consider that the failure to provide one disabled parking space, cycle parking and access alterations would result in unacceptable transport and highway impacts.
20. In terms of the failure to provide one disabled parking space, the Council have not provided substantive evidence as to how this would result in unacceptable transport and highways impacts. In light of the parking spaces that are available within the appeal site, combined with the relatively low number of additional units, the PTAL rating, and availability of on-street parking, I do not consider that, on the matter of parking, there would be unacceptable transport and highways impacts.
21. In terms of the access arrangements, the Council outline how a previous application proposed alterations to the access and entrance gates and that this is not part of the current proposal. The Council have not, however, substantively demonstrated why such alterations are required to make the development acceptable in transport and highway terms, and conversely, they have not substantively demonstrated why not undertaking these alterations would have unacceptable transport and highway impacts.
22. In terms of cycle parking, in the interests of sustainable travel, such a provision would be necessary to make the development acceptable. I observed that there was a reasonable amount of space to the rear of the building where an appropriate storage facility could be accommodated. It would therefore be appropriate to secure the provision of cycle parking by an appropriately worded planning condition were the appeal to be allowed.

23. The Order sets out that the local planning authority must, when considering an application for prior approval, have regard to the National Planning Policy Framework so far as relevant to the subject matter of the prior approval, as if the application were a planning application. Having regard to paragraph 111 of the Framework, the proposed development would not result in an unacceptable impact on highway safety or have residual cumulative impacts on the road network that would be severe.
24. A prior approval appeal should not be determined, expressly or otherwise, on the basis of s38(6)¹ or as though the development plan must be applied. The principle of development is established through the grant of permission by the Order. I have had regard to the development plan insofar as it relates to the subject matters, and only as evidence to support (rather than being the basis of) my planning judgment. The proposed development would comply with the aims of Policies T5, T6 and T7 of the London Plan (2021) and Policies DM29 and DM30 of the Croydon Local Plan (2018) in terms of its transport and highways impacts, having regard to parking and cycle parking.

External appearance

25. Where any development under Class A is proposed, development is permitted subject to the condition that, before beginning the development, the developer must apply to the local planning authority for prior approval of the authority as to, amongst other things, the external appearance of the building.
26. Although acknowledging relevant case law², the appellant also suggests that in considering the '*external appearance of the building*' this should be confined solely to the building in question and not to its wider context. In reaching this view, the appellant has included appeal decisions where Inspectors took such a view. However, the Order does not make such a suggestion. Secondly, and, in any event, it is 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.
27. It is therefore not necessary and will not always be sensible or appropriate to consider the external appearance of the building in isolation; the street context may be an aspect of the building's external appearance. What is acceptable on one site may not be on another.
28. In considering whether control of external appearance is limited to its effects on the subject property itself, as opposed to its surroundings, the Courts have held that there is nothing in the language of the Order to justify the viewpoint that it must relate solely to the building itself. The Order does not contain any language to the effect that the decision-maker may only assess the impact of that external appearance *on* the building itself. The Courts have held that the decision maker is therefore empowered to assess and control all relevant aspects of that external appearance, and not simply those which impact on the subject building.
29. The appeal property is situated on part of Brigstock Road where there is a range of building styles, scales, and mass. The appeal property sits between a

¹ Planning and Compulsory Purchase Act 2004

² Cab Housing Limited & others v Secretary of State for Levelling Up, Housing and Communities & others [2022] EWHC 208 (Admin)

- similarly designed three storey block and a traditionally designed double fronted two storey detached building which is also a locally listed building.
30. The evidence provides a range of street-scene views that helpfully demonstrate the variation in building heights between the similarly styled locally listed buildings of nos. 133 and 145 Brigstock Road. Of particular note is the modern Beaumaris Court development which is constructed over four floors. The street-scene elevation, which includes the extended appeal building, clearly illustrates how the appeal building would be seen amongst the surrounding buildings.
31. The proposed development replicates the design approach of the existing building whereby the top-most storey incorporates almost vertical tile hanging that extend beyond other faces of the building. In the existing building, together with the adjacent 141 Brigstock Road, this provides a visually acceptable means of providing accommodation in a third storey without appearing overly dominant.
32. In the appeal proposal, however, adopting the same approach greatly increases the prominence of the building. The design of the top-floor with the deep overhanging tile cladding accentuates the height of the building. This is in contrast with the nearby Beaumaris Court whereby the top-floor sits behind the main façade and incorporates a series of setbacks to relieve the overall dominance of the top-floor.
33. The relationship with the similarly designed adjacent building would be significantly disrupted. There would be a marked and striking difference in height, with only a small separation, that would create a discordant and inharmonious relationship. The resulting building would appear dominant and incongruous in the street-scene, particularly when viewed from further eastwards on Brigstock Road. This relationship does not currently exist in the street-scene, where there is a gradual increase in building heights from Whitehorse Manor School to no. 135 Brigstock Road and to Beaumaris Court, then descending again to both no. 141 Brigstock Road and the appeal building. The extended appeal building would, however, produce a sudden and abrupt change in levels that would harmfully upset this arrangement.
34. There would be a similar disparity, although to a lesser degree, with no. 145 Brigstock Road, which is a locally listed building. By reason of the height difference, the extended appeal building would diminish the significance of the locally listed building and cause minor harm. I recognise the relationship that exists between Beaumaris Court and no. 133 Brigstock Road, also a locally listed building of similar design, and that the Council deemed this arrangement to be acceptable.
35. The street-scene elevation shows, however, that there would be a greater difference in height between the appeal property and no. 145 than currently exists between Beaumaris Court and no. 133. It is also relevant that the developments in question are for different design, and I have, in any event reached my own conclusions on the individual merits of the appeal.
36. I therefore find that the proposed development would cause significant harm to the external appearance of the building. The proposal would be contrary to the National Planning Policy Framework (2021) in respect of the matter of external appearance and the requirement for good design.

37. In terms of their relevance as a material consideration as they relate to the prior approval matters, the proposed development would be contrary to Policies SP4, DM10 and DM18 of the Croydon Local Plan (2018) and Policies DM3 and DM4 of the London Plan (2021) in relation to the requirement that development is of high-quality design by having regard to, amongst other things, the scale and height of the surrounding area, and heritage assets.

Other Matters

38. Aside from the Beaumaris Court development, the appellant has drawn my attention to roof extensions that have been granted planning permission in and around Croydon. I do not have full details of these examples to give them significant weight in the appeal. They also relate to different developments in different contexts.

Conclusion

39. Although I have found that the proposed development would not be contrary to the restrictions of Class A and would not have an unacceptable impact in terms of transport and highways, I have found that the external appearance of the building would cause significant harm.

40. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR