



Appeal Decision

Site visit made on 4 April 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Appeal Ref: APP/P5870/W/22/3300672

Oakwood Court, Benhill Wood Road, Sutton SM1 4HS

- 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 Oakwood Residents Committee Limited against the decision of London Borough of Sutton.
 - The application Ref DM2022/00597, dated 24 March 2022, was refused by notice dated 19 May 2022.
 - The development proposed is single storey roof extension to provide 2 new dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of the proposed development from the Council's Decision Notice in the interests of clarity and brevity as the description contained on the application form contains considerable superfluous information.
3. Under Article 3(1) and Schedule 2, Part 20, Class A of the GPDO planning permission is granted for 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, along with associated works detailed by the GPDO, subject to limitations and conditions.
4. Where development under Class A is proposed the developer must apply to the Local Planning Authority (LPA) for prior approval of the authority as to a range of matters.
5. 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.
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 Part 1 Class AA, indicates that a

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

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.

7. I see no reason why this judgement would not be applicable to the appeal before me. I am therefore convinced that appropriate considerations of this case would include both the effect of development on the host building and its effect on the wider area.

Main Issues

8. The main issues are:

- Whether prior approval should be granted under Schedule 2, Part 20, Class A of the GPDO, with respect to the transport and highways impacts of the development; and
- Whether prior approval should be granted under Schedule 2, Part 20, Class A of the GPDO, with respect to the external appearance of the building.

Reasons

Highways

9. The appellant comments that the site is within an area of good accessibility, within walking distance of a town centre. The appeal site is also located within a Controlled Parking Zone (CPZ).
10. In regard to highway safety and parking provision, the submitted drawings indicate that the site has three garages to the rear and five off-street car parking spaces to the front of the building. The appellant suggests that future occupiers would be able to use these off-street parking spaces and consequently there would be no need for the occupants of the proposed development to park on-street. However, no evidence has been provided to demonstrate that these spaces are not already in use by the existing occupiers of the appeal building.
11. The CPZ indicates on street parking in the area is in high demand such that the demand is exceeding the spaces available. As the proposal would provide two additional residential units, without an increase in off-street car parking at the appeal site, there is potential for additional car parking demand to be displaced onto the surrounding streets. Consequently, this would increase the risk of inappropriate parking and vehicles circulating to find spaces, both of which have the potential to harm highway safety in the area. No evidence, such as a parking survey, has been provided to demonstrate that sufficient on street parking capacity exists to accommodate the demand of future occupiers.
12. Whilst the Council's suggested condition requiring cycle storage would encourage sustainable modes of transport, it seems to me, unlikely that this alone would be sufficient to discourage future occupiers from owning cars which could then be parked on surrounding streets. The Council has confirmed that a legal agreement which prevents future occupiers of the residential units from being eligible to obtain parking permits for use within the Borough would overcome its concerns.

13. The appellant questions whether a legal agreement is necessary and whether the requirement to remove prohibit future occupiers from obtaining residents car parking permits could have been dealt with by a pre-occupation planning condition. However, I am mindful of the guidance within the PPG which outlines that a negatively worded condition limiting the development that can take place until a planning obligation has been entered into is unlikely to be appropriate in the majority of cases. Whilst the PPG does confirm that, in exceptional circumstances a negatively worded condition may be appropriate, I have not been made aware of any exceptional circumstances which are applicable in this instance.
14. Nevertheless, the appellant has provided a signed unilateral undertaking (UU) which removes the right of the future occupiers of the units to apply for a parking permit to allow parking within the CPZ. However, the drafting of the UU does not comply with the strict terms of Section 106 of the Town and Country Planning Act 1990 (as amended) (TCPA). This is because it does not relate to the use of land which is the subject of this application. Instead, it seeks to prevent the future occupiers of the units from applying for a permit to park on the highway. The UU is not made pursuant to powers including Section 16 of the Greater London Council (General Powers) Act 1974 which are more wide ranging in scope than Section 106 of the TCPA. Overall, it would not be enforceable as provided by s106(3) and s106(5) of the TCPA because it would not be a planning obligation.
15. Insofar as it is a material consideration, I have had regard to Policy 37 of the Sutton Local Plan (2018). This policy outlines, amongst other matters, the scenarios for which the Council will seek car-free development for residential schemes.
16. For the reasons above, with the absence of appropriate mitigation, I must conclude, the proposal would have harmful transport and highways impacts. Consequently, prior approval should not be granted for the proposed development when regard is paid to the requirements of paragraph A.2 (a) of the GPDO with respect to the transport and highways impacts of the development.

External appearance

17. Oakwood Court is a three storey block of flats, located within a prominent corner location. The building is finished in white rendered walls, with bay windows and horizontal decorative bands. It is common ground between the parties that the design of the extension would integrate with the existing building by replicating the bay windows and through the use of matching white render.
18. The proposal would add a single storey to the building, taking it to four storeys in height. The character of the street is diverse with a variety of building forms and heights including single storey bungalows, two storey houses and three storey blocks of flats, many of which have pitched roofs which increase their height. Although the building would be the tallest structure in the local area, it would be read in a broad context amongst various roof heights. As such, the proposal would complement and integrate well within the mixed built form. Thus, I do not share the Council's concern that the additional floor of accommodation would cause harm to the matter of 'external appearance' from a height point of view.

19. The additional storey would increase the visibility of the property from a variety of viewpoints on Benhill Wood Court and Oakhill Road. However, visibility in itself is not an indicator of harm. The site is in a corner location on a junction and the land slopes to its rear, as such the building is already prominent. The appeal building is already of a larger overall scale than the adjacent neighbouring properties and its design emphasises its verticality. It is therefore already of a markedly different character and appearance. I find that the overall bulk and mass would sit comfortably on this site and that the proposed additional floor would not substantially alter the contribution the building makes to views of the site from Oakhill Road or Benhill Wood Road.
20. The National Planning Policy Framework (2021) (Framework) seeks to boost the supply of housing. It also encourages making effective use of land and supports the use of airspace above existing residential premises for new homes. The proposed upward extension would accord with these requirements.
21. I have reviewed the appeal decision² referenced by the Council. Unlike this proposal the appeal decision relates to a two storey extension, within another London borough, on a street which the Inspector found was largely characterised by terraced properties. Conversely, the proposal before me, which involves a single storey extension and is located in an area with a mixture of building heights and forms, would have a different effect on the external appearance of the host building. The referenced appeal is therefore not directly comparable.
22. The site is not within an Area of Potential Intensification or Area of Taller Building Potential as identified within the development plan. However, for the reasons set out above, the building would assimilate appropriately with the host building and its surroundings. Insofar as they are material considerations, I have had regard to Policies D3 and D4 of the London Plan (2021) and Policy 28 of the Sutton Local Plan (2018). These policies seek, amongst other matters, for development to respect the local context.
23. Accordingly, the proposal would comply with paragraph A.2(e) of the GPDO.

Other Matters

24. I acknowledge the appellant's concerns regarding the Council's conduct during the processing of the application. However, I can confirm I have determined the appeal on its planning merits.

Conclusion

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

B Pattison

INSPECTOR

² APP/A5840/W/22/3291568