



Appeal Decision

Site visit made on 28 March 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2023

Appeal Ref: APP/E5900/D/23/3316765

5 Swedenborg Gardens, Tower Hamlets, London E1 8HP

- 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 Class AA of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Dr Uddin against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/22/01757, dated 27 August 2022, was refused by notice dated 16 November 2022.
 - The development proposed is application for Prior Approval under Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development Order) 2015 (as amended), comprising the erection of an additional storey above the existing two-storey dwellinghouse (to a maximum additional height of 2.649m).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The original description of development was modified by the Council with the agreement of the appellant. Accordingly, I have used the description given in the Council's decision notice in the banner heading above.
3. Under the provisions of Article 3(1) and Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), where an existing dwellinghouse consists of two or more storeys, planning permission is granted for its enlargement consisting of the construction of up to two additional storeys immediately above the topmost storey, together with any engineering operations reasonably necessary for the purpose of that construction, subject to various conditions and limitations.
4. Paragraph AA.2.(3) of Part 1, Class AA of the GPDO requires, as a condition of the permission, that prior approval be sought for the matters listed in that paragraph. Prior approval is required for, amongst other things, the external appearance of the dwellinghouse, including the design and architectural features of the principal elevation. The Council's reason for refusal expresses their objection to the proposal in this respect.
5. In determining applications for prior approval, paragraph AA.3 (12) of Part 1, Class AA of the GPDO requires the local planning authority to take into account any representations made to them as a result of any consultation or publicity, 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 the appeal on the same basis.

6. The prior approval provisions do not require regard to be had to the development plan because the principle of development is established through the grant of permission by the GPDO. I have therefore only had regard to the policies of the development plan referred to by the main parties insofar as they are material to the matters for which prior approval is sought.

Main Issues

7. The main issue is whether prior approval should be granted having regard to the effect of the development on the external appearance of the dwelling.

Reasons

8. The appeal property is a relatively modern mid-terraced flat-roofed two-storey house. The houses in the terrace vary in their external finishes. However, apart from the pair of more recently constructed dwellings at the end of the terrace which are marginally taller, it is a coherent row of houses having a predominately identical style and height which gives the terrace a relatively consistent appearance. The consistent rhythm created by the position of windows and doors, along with the distinctive form and height of the terrace distinguishes it from other nearby blocks of dwellings, many of which are substantially taller.
9. The small centrally located flat-roofed extensions above the main roofs of 9 to 12 Swedenborg Gardens, which the appellant suggests may provide loft storage, are set in a substantial distance from the front and rear elevations of the houses and are not particularly noticeable as a feature of the street scene. In contrast to those extensions, the proposal would be built directly above the whole of No 5, it would be significantly higher than those smaller features, and would therefore create a substantially more prominent and intrusive element in views of the terrace from many surrounding vantage points.
10. The design of the proposed extension, its roof form, the placement of windows and the materials proposed would match those of the existing property. I am satisfied that the design and architectural style of the proposed development would therefore be sympathetic to the host building. However, notwithstanding the conclusions reached in some earlier appeals quoted by the appellant¹, the judgement in *CAB Housing Ltd v SSLUHC and Broxbourne BC* [2023] EWCA Civ 194 in respect of considerations regarding external appearance settled earlier disputes in respect of this matter. Both main parties have been given the opportunity to comment on that judgement, because it was handed down after the Council issued their decision on the appeal before me, and I have had regard to the representations received.
11. I am satisfied that a proper consideration of the proposal before me must take account of its effect on the appearance of at least the immediate vicinity of the appeal site. The proposed development would result in a considerable increase

¹ Appeal Refs: APP/J1535/D/21/3266264; APP/X1735/D/21/3269472; APP/X5990/D/21/3274155; and APP/N4205/D/21/3277944

in the height and upper bulk and mass of the appeal property, and it would project significantly and noticeably above the other houses in the terrace. There are taller blocks of buildings nearby, including those referred to by the appellant. However, the difference in height and mass that would be introduced into the terrace through the proposal in this section of Swedenborg Gardens would be striking.

12. The proposal would create an intrusive interruption to the predominantly regular roofline along the street by creating a visually dominant extension that would tower incongruously above its neighbours. The variation in heights of terraces and blocks of buildings in the vicinity does not justify the introduction of a noticeably obtrusive and harmful feature close to the centre of this terrace where there is currently an overall pleasing sense of consistency to the street.
13. Notwithstanding my conclusion that the proposed development would be sympathetic to the appearance of the host building, it would be unduly prominent and thereby result in significant harm to the appearance of the street scene in this part of Swedenborg Gardens. This would be contrary to the Framework which supports upward extensions where development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene. Furthermore, the Framework seeks good design and development that is visually attractive and sympathetic to local character. The proposal would fail to meet this expectation.
14. Although not determinative, the proposal would also be contrary to Policy S.DH1 of the Tower Hamlets Local Plan 2031 (January 2020) which is material to the matters for which prior approval is sought since it seeks to ensure development meets the highest standards of design which respects and positively responds to its context, is of an appropriate scale, height, mass, bulk and form in its site and context, and represents good urban design that complements streetscape rhythm.
15. For these reasons, I conclude that prior approval should not be granted having regard to the effect of the development on the external appearance of the dwelling.

Conclusion

16. For the reasons given above, the appeal is dismissed.

David English

INSPECTOR