



Appeal Decision

Site visit made on 12 September 2023

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2023

Appeal Ref: APP/U5930/W/23/3318996

Hedge Court, 103 Hainault Road, Leytonstone, Waltham Forest E11 1DU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under the provisions of 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 Arthur Alexander Properties Limited against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 223311, dated 17 November 2022, was refused by notice dated 5 January 2023.
 - The development proposed is prior approval for the construction of a roof extension on a residential block to create a 3rd floor providing 3 self-contained flats (3 x 1-bed) (use class C3). Works include the provision of refuse/cycle storage and associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading above is taken from the appeal form and the Council's decision notice as a description was not provided on the application form.
3. The appeal is made pursuant to Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), which provides for new dwelling houses on detached blocks of flats. For development to be permitted it must satisfy the limitations set out at paragraph A.1. Compliance with the limitations at A.1 is not an issue in dispute between the parties. I have no reason to take a different view.
4. Paragraph A.2 sets out a number of conditions including the requirement that the developer applies to the local planning authority for prior approval relating to a number of matters. The Council refused to grant prior approval on the basis of A.2(1)(e) regarding the external appearance of the building, and A.2(1)(g) relating to the impact on the amenity of neighbouring premises with particular regard to loss of light.

Main Issues

5. The main issues are whether or not prior approval should be granted having particular regard to the external appearance of the building; and the impact on the amenity of the existing building and neighbouring premises with respect to loss of light.

Reasons

External appearance

6. The appeal site relates to a three storey flat roofed building containing nine flats located on the northern side of Hainault Road opposite its junction with Bulwer Road. The site is bound to the west by 101 Hainault Road, a two storey Edwardian building which has been divided into flats, and to the east by 105 Hainault Road, a two/three storey modern block of flats.
7. Hainault Road is a long road with a variety of sizes and styles of property. There are a number of taller buildings within the vicinity including those referred to by the appellant. However, the appeal building is seen largely within the context of two and three storey properties on this stretch of the road. Whilst the flat roofed design of the appeal building contrasts with the pitched roofs of the buildings on either side, the top of the roof is broadly in line with the ridge lines of the adjacent properties so that it sits relatively comfortably with its surroundings.
8. The appeal proposal is for an additional storey above the existing building to create three new self-contained flats. It is a revised scheme following the Council's refusal of a previous application for two additional storeys to provide six flats. The arrangement of fenestration and the flat roof design of the proposal would be generally consistent with the floors below. The proposal would therefore broadly reflect the design of the elevations and the proposed external grey zinc cladding would also be appropriate. I also note that the additional storey would be slightly set back from the front of the building. Thus, it would adequately respect the character and form of the building. However, given the characteristics of the building and its position in the road, the relationship of the building to its context is an important aspect of external appearance. Case law has confirmed that external appearance is not limited to the impact on the subject property itself, but also neighbouring premises and the locality.
9. The proposed additional storey would increase the height of the building by around 2.9m, excluding the relocated rooftop plant. Given the two and three storey height of the neighbouring buildings on either side, the scale of the resultant four storey building would appear dominant and have a jarring effect with adjacent built form. Notwithstanding the slight set back from the front elevation of the building, the proposal would appear noticeably taller and bulkier than the two and three storey properties on this stretch of Hainault Road which have a generally consistent height.
10. Although there are some trees and shrubs to the site frontage, these would not sufficiently mitigate the adverse visual effects of the proposal given its height. This impact would be prominent in views along Hainault Road and from Bulwer Road and would be unsympathetic and unduly obtrusive with the host building and the locality due to its height, scale and massing. I therefore conclude that the external appearance of the building would be unacceptable.
11. I accept that proposals under Class A of Part 20 of the GPDO have the consequence of resulting in a building of greater scale and that the site is not within a conservation area or adjacent to any heritage assets. Paragraph 120 of the National Planning Policy Framework (the Framework) sets out that opportunities to use the airspace above existing residential premises for new

homes should be supported. However, the Framework also says that upwards extensions should be allowed where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene. This would not be the case with the appeal proposal. Thus, the proposal would be contrary to the Framework insofar as it requires, amongst other things, development that is visually attractive and sympathetic to local character, including the surrounding built environment.

12. The Council's reason for refusal refers to Policy CS15 of the Waltham Forest Local Plan Core Strategy (2012) and Policy DM29 of the Development Management Policies Local Plan (2013). The prior approval provisions do not require regard to be had to the development plan. Insofar as they are material to the prior approval matter though, the proposal would be contrary to these policies which seek to ensure that development achieves a high standard of design which responds positively to local context and character.

Neighbouring amenity

13. The appeal building has a particularly close relationship with the neighbouring buildings on either side, Nos 101 and 105. No 101 is set slightly forward of the appeal building, whilst No 105 follows broadly the same building line to the front. The Council's principal concern relates to the effect of the proposal on occupiers of No 105 in terms of light.
14. The appellant's Daylight and Sunlight Report finds that the proposal would not result in significant loss of daylight to the windows of No 105. However, it identifies that a south facing first floor window within that property would experience a reduction in sunlight of more than 20%. The evidence before me indicates that this window likely serves a small galley kitchen which the Mayor of London Supplementary Planning Guidance (SPG) would not consider to be a habitable room. Moreover, as this window is south facing, it would continue to have a relatively open aspect and would not be significantly overshadowed given its orientation relative to the proposal.
15. The Council is also concerned about the possible impact on three windows on the flank wall of No 105 which face towards the appeal building. Based on the evidence provided by the appellant, including the layouts of the flats within the neighbouring building, it is likely that these small windows serve either kitchens or bathrooms. Even if these windows do serve habitable rooms, I am satisfied that the development would not increase the height of the building so significantly that it would result in an unacceptable effect on these windows in terms of loss of daylight or sunlight.
16. The Daylight and Sunlight Report does not assess the impact of the proposal on the occupiers within the existing appeal building. However, given the height of the roof extension it is unlikely that it would result in significant loss of light to the existing flats below.
17. For the above reasons, I conclude that the impact on the amenity of the existing building and neighbouring premises in respect of loss of light would be limited and acceptable, within the context of the subject matter of the prior approval required under Schedule 2, Part 20, Class A, Paragraph A.2(1)(g) of the GPDO.

Other Matters

18. The Council have advised that a legal agreement would have been required if it had found the scheme acceptable, to secure, amongst other things, implementation of a car-free development and financial contributions to enhance sustainable modes of transport and to mitigate the impact on the Epping Forest Special Area of Conservation. As I am dismissing the appeal for other reasons, there is no need for me to consider this matter further.
19. The appellant contends that the proposal would enable external improvements to the lower floors of the building which have been granted permission under a separate application¹. A draft unilateral undertaking has been submitted with the appeal which would commit the appellant to implementing that permission. However, I have no detailed evidence before me to demonstrate that those improvements are dependent on the appeal proposal taking place. Moreover, on the basis of the details provided, the improvements do not justify the harmful effect arising from the appeal proposal. The proposal would make efficient use of the site and boost the supply of housing in accordance with the Framework. Nonetheless, the provision of three new flats would be a modest benefit. I conclude that the benefits of the proposal would not outweigh the harm that I have identified.

Conclusion

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

M Ollerenshaw

INSPECTOR

¹ Council ref 223081