



Appeal Decision

Site visit made on 5 September 2023

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th October 2023

Appeal Ref: APP/A1910/W/23/3314903

1-31 Nightingale Walk, Hemel Hempstead, Hertfordshire HP2 7QX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Abbeytown Ltd against the decision of Dacorum Borough Council.
 - The application Ref 22/01766/DPA, dated 30 May 2022, was refused by notice dated 3 November 2022.
 - The development proposed is the construction of a part-one, part-two storey extension to the existing buildings to provide 16 new dwellinghouses.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The provisions of Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) do not require regard to be had to the development plan. I have had regard to the policies of the development plan, the National Planning Policy Framework (the Framework) and any related guidance only in so far as they are relevant to the assessment of the main issues in this case.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the external appearance of the building, having particular regard to its effect on the character and appearance of the area; and,
 - the amenity of the occupiers of the existing building and neighbouring premises.

Reasons

External appearance of the building

4. The appeal site is a three-storey block of flats that is located at the end of Berkley Square which is a residential road. The appeal site occupies a prominent position at a turning head that is surrounded by communal grassed areas and densely vegetated boundaries which results in an open and verdant character and appearance.
5. The proposal seeks to raise the height of flats 1-12 and 26-31 by two storeys and flats 14-25 by an additional storey. The Council do not raise an objection to the two-storey element of the proposal, and I have no substantive evidence to conclude otherwise.

6. The Council's main area of concern relates to the additional storey proposed above flats 14-25. These flats are located immediately opposite the turning head and at present, due to the slight reduction in ground level along Berkley Square the flats are at a similar height to other houses in the area and therefore integrate well with the wider area. The additional storey would result in the building being noticeably higher and therefore visible from the wider area, resulting in a dominant feature.
7. The proposal would also enlarge the existing bin storage area, located opposite the turning area. While some benefit would be provided by increasing the amount of bin space for residents, this increase in size would stand out due to the prominent position and also draw further attention to the increase in height of the building.
8. While a condition could be imposed to ensure details of the bin store are submitted, the location is an important aspect of the scheme, and I am therefore not satisfied that this could be changed through a condition. I have therefore considered the location of the bin store as submitted.
9. The Council refer to HCA 33 of the Area Bases Policies, Supplementary Planning Guidance (May 2004) which seeks to restrict the height of buildings above 3 storeys. While Paragraph 129 of the Framework outlines that design guides and codes can be prepared at an area-wide, neighbourhood or site-specific scale, and to carry weight in decision-making should be produced either as part of a plan or as supplementary planning documents, in this particular case the principle of extending upwards is established by the GPDO and as such I find no conflict with this policy.
10. I therefore conclude that the proposal would have an unacceptable external appearance, having particular regard to its effect on the character and appearance of the area. I find conflict with Paragraphs 120, 126, 130 and 132 of the Framework which amongst other things, seeks the creation of high quality, beautiful and sustainable buildings, ensures development is consistent with the prevailing height and form of neighbouring properties and the overall street scene and will function well and add to the overall quality of the area. I have also had regard to the National Design Guide in reaching my decision.

Amenity of the occupiers of the existing building and neighbouring premises

11. The overall increase in height would result in a greater sense of enclosure, particularly due to the T-shape of the flats. The flats that are located at the intersections of the T-shape would be most affected. I accept the existing and established relationship and existing occupiers outlook from the windows in these areas. However, the greater sense of enclosure as a result in the increase in height, would result in an overbearing and intrusive outlook from these properties.
12. These windows mostly serve bedrooms and while it may be the case that these are used less intensively than the main living space, existing occupiers should still have a good outlook from these windows which the proposal would not provide.
13. While I note the provision of an existing car parking area, and that the proposal would increase the size of this parking area and include the provision of parking for disabled, the proposal would require the removal of a section of

green space. The green space is small and may not be used recreationally by residents, however, it currently provides a soft buffer for existing occupiers between the flats and car parking area.

14. The proposed loss of this green space and its replacement with hard surfaced car parking areas and vehicles would have a harmful effect on the outlook of the occupiers of flats 1 to 6, 14 to 19 and 20 to 25.
15. The extension of the car park would also mean more cars would be using this area and therefore increase general noise and disturbance particularly from vehicles moving around the car park which would result in glare from headlights, noise from engines and potential fumes. I note that existing spaces face towards some of the ground floor flats and that the proposed layout seeks to create a more functional car park, however the green space provides a buffer, reducing the impact which the proposal would remove and result in vehicles being located much closer to the flats.
16. The new car parking layout would also result in parking spaces being located much closer and facing towards the ground floor flats. This could mean that drivers would be able to see into the windows of these properties when sat in the car which would result in a loss of privacy for these occupiers.
17. I note that the Council raise concern over the potential for high vehicles in particular. I have not been provided with any detailed evidence in relation to this concern, but based on the evidence before me, a residential car park is unlikely to encourage this type of vehicle. It is likely that a normal level of deliveries would take place which would be more likely to use the turning space rather than the car park.
18. The appellant is willing to explore alternative layouts for the car parking area through a planning condition, however, this is a fundamental aspect of the scheme where the basis needs to be considered. As such, I do not consider the imposition of a condition to be suitable in the circumstances.
19. I therefore conclude that the proposal would have an unacceptable impact on amenity of the occupiers of the existing building and neighbouring premises. I find conflict with paragraph 130 of the Framework which amongst other things, seeks to create places with a high standard of amenity for existing and future users.

Other Matters

20. Since the Council made its decision, it has received comments from Hertfordshire Lead Local Flood Authority that suggest it has not been possible to establish whether a sustainable surface water drainage scheme can be delivered on site. However, I am satisfied that were I minded to allow this appeal this matter could have been addressed by a suitably worded condition and as such, I have not sought to explore this matter further.
21. The appeal site falls within the zone of influence for the Chiltern Beechwoods Special Area of Conservation. As the competent decision-making authority, if I had been minded to allow the appeal it would have been necessary for me to complete an Appropriate Assessment for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

22. I acknowledge the support that Paragraph 120 of the National Planning Policy Framework (the Framework) supports opportunities to use the airspace above existing residential premises for new homes. I also note the wider government support for upward extensions.
23. The general design and materials replicate the existing lower floors and in this regard the Council's design and conservation team raise no objection to design, subject to a condition. The proposal would also provide housing in a sustainable location outside of the green belt and provide acceptable levels of daylight and sunlight for future and existing occupiers. However, these matters do not outweigh the harm I have identified.
24. I note that the Council is considering a revised application for a similar proposal and that the Council have found similar aspects of the proposal to be acceptable. However, while I do not have the full details in front of me the scheme is different and in particular the car parking area has a different layout. In any case, the Council do not appear to have made a formal decision on this application. As such I afford this limited weight in my consideration.
25. I have had regard to the appeal decision¹ and agree with the findings of the Inspector in that the principle of extending upwards is established. However, for the reasons set out above, I have found harm in relation to the external appearance and the amenity of the occupiers of the existing building and neighbouring premises.

Conclusion

26. For the reasons given above, the development is not permitted under the terms of the GDPO. Therefore, I conclude that the appeal is dismissed.

D Wilson

INSPECTOR

¹ APP/U5930/W/21/3279947