



Appeal Decision

Site visit made on 24 October 2023

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2023

Appeal Ref: APP/U5360/D/23/3323614

7 Brett Close, Hackney, London N16 0BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval under Article 3(1) and Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
 - The appeal is made by Benedict Elliott Smith against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2022/2242, dated 10 September 2022, was refused by notice dated 14 March 2023.
 - The development proposed is described as an “additional storey constructed on end of terrace dwelling house in materials of similar appearance to existing. Internal works as necessary for occupation and construction of storey”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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.
3. 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.
4. 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.
5. 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 Issue

6. The main issue of the appeal is whether or not prior approval should be granted having regard to the external appearance of the dwellinghouse, including the design and architectural features of the principal elevation.

Reasons

7. The appeal site comprises a three-storey, post-war, red brick, end terrace property. The gable end of the appeal site faces prominently onto a small area of open space within the development. Together with No.8 and No. 9 Brett Close they form a short terrace of three-storey properties, which are attached to a terrace of two storey properties from No.10 through to No.23 Brett Close. Although the dwellings in the row have undergone some minor alterations to their principal elevations, they retain a strong sense of uniformity.
8. The appeal site is located behind and away from Church Street, Lordship Road and Yoakley Road, meaning that there are limited views of the site from public vantage points. The immediate surrounding area is characterised by blocks of two, three and four storey buildings. However, the taller buildings are located closer to the road frontages, with the lower height buildings located away from these locations. The immediate area surrounding the appeal site is therefore characterised by two and three storey buildings, including those visible from the appeal site to the rear of Lordship Road.
9. The proposed development would involve the erection of an additional storey, increasing the height of the building by approximately 2.7 metres. The roof pitch, materials, design, and fenestration would match and be sympathetic to those used in the existing building. However, whilst the design and materials would match the external appearance of the dwellinghouse, including its principal and side elevations, the proposed erection of an additional storey would create an intrusive interruption to the predominantly regular roofline along the short terrace of three storey dwellings and significantly unbalance the terrace. This would create a visually dominant extension that would tower above its neighbours, causing harm to the character and appearance of the existing dwellinghouse and its immediate surrounding area.
10. Although I acknowledge that there are some variations in heights of terraces and blocks of buildings in the vicinity, they are not directly comparable to the appeal scheme in that they do not typically relate to a substantial increase in height of an end terrace property located in a short row of 3 properties of the same height. Furthermore, the existence of this variety does not justify the introduction of a noticeably obtrusive and harmful extension where there is currently an overall pleasing sense of consistency to height of the row of existing dwellings.
11. My attention has been drawn to two appeal decisions¹ by the appellant which relate to the use of permitted development rights for upwards extensions to create additional dwellinghouses. However, whilst it is the case that the GPDO grants planning permission for upwards extensions, there is still a requirement

¹ Appeal Ref: APP/H21840/W/21/3266807 and APP/T1410/W/20/3263486

to consider the effect of exercising these rights on the external appearance of dwelling house, which the Courts² have found also extends to impacts on neighbouring premises and the locality.

12. The appeal site abuts the boundary of Stoke Newington Conservation Area (SNCA) and locally listed buildings No. 10 and No. 12 Lordship Road. The SNCA includes Abney Park Cemetery, Church Street and the, relatively busy, High Street. The Conservation Area is densely developed to the south with more open space to the north and around the entrance to the cemetery. Although the appeal site abuts the boundary of the SNCA, views from and towards the SNCA are very limited.
13. No. 10 and No. 12 Lordship Road are two-storey, Victorian terraced properties of painted brick construction, with sash windows and stone cills. These buildings which are recognised as locally listed buildings, are also located within the SNCA. The significance of these buildings lies in their architectural interest, particularly from their front elevations on Lordship Road. In relation to the appeal site, only the rear elevations of these properties are visible, and these views would not be adversely affected by the proposed upwards extension.
14. Therefore, by virtue of the location of the appeal sits and the limited views of the appeal site from and to these locations, I find that the proposed development would have a neutral effect on their setting. Accordingly, I find that the proposed development would preserve the setting of the SNCA and the locally listed buildings on Lordship Road.
15. Notwithstanding my conclusion that the proposed development would be sympathetic in terms of design and materials to the appearance of the existing dwellinghouse, and it would preserve the setting of the SNCA and locally listed buildings, it would nevertheless be unduly prominent addition. It would therefore result in significant harm to the appearance of dwellinghouse and its contribution to the street scene in this part of Brett Close. This would be contrary to the National Planning Policy Framework (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.
16. 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.

K Lancaster

INSPECTOR

² CAB Housing Ltd v SSLUHC & Broxbourne BC [2023] EWCA Civ 194