



Appeal Decision

Site visit made on 1 November 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2023

Appeal Ref: APP/G2245/D/23/3317783

Lambourne, 32A Lingfield Road, Edenbridge TN8 5DX

- 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 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr and Mrs Edwards against the decision of Sevenoaks District Council.
 - The application Ref 22/02910/PAH, dated 20 October 2022, was refused by notice dated 15 December 2022.
 - The development proposed is described as addition of one new floor and replacement of existing roof as shown on attached plans.
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Decision

1. The appeal is allowed and prior approval is given 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) for the addition of one new floor and replacement of existing roof as shown on attached plans at Lambourne, 32A Lingfield Road, Edenbridge TN8 5DX in accordance with the terms of the application, Ref 22/02910/PAH, dated 20 October 2022, and the plans submitted with it.

Preliminary Matters

2. In making my assessment on 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 indicates that a wider interpretation of external appearance could be used in the assessment of Prior Approval applications under Part 20. I am therefore satisfied that appropriate consideration of this case includes both the effect of development on the host building and its effect on the wider area.
3. 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.
4. In response to the Council's first reason for refusal, the appeal submission includes an additional drawing depicting existing and proposed sections which indicate the internal floor to ceiling heights within the appeal property. In response to the second reason for refusal the appeal submission includes a

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

Daylight Factor Assessment (DFA). Neither the section drawing or DFA were before the Council at the time of its decision.

5. It is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
6. In this case, the new drawing depicts additional detail in relation to the internal floor to ceiling heights, rather than any amendments to the proposal. Similarly, the DFA provides additional information relating to daylight levels at an adjoining property, and does not involve any amendments to the proposal. For this reason, I consider that there would be no prejudice to any party by considering the additional drawing and DFA, and I have therefore determined the appeal on this basis.

Main Issues

7. Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), permits development consisting of the enlargement of a dwellinghouse by construction of one additional storey, where the existing dwellinghouse consists of one storey, together with any reasonably necessary engineering operations. This is subject to a number of qualifying criteria. Paragraph AA.1 sets out the circumstances in which development is not permitted by Class AA. It is disputed that the proposals would be permitted development against the criteria in AA.1, in particular paragraph (h), which requires that the floor to ceiling height of the additional storey, measured internally, should not exceed that of any storey of the principal part of the existing dwellinghouse.
8. Development is permitted under Class AA subject to limitations and conditions and a requirement that the developer applies for prior approval to the local planning authority. Paragraph AA.2.(3)(a)(i) of Class AA requires prior approval to be sought for the 'impact on the amenity of any adjoining premises including overlooking, privacy and the loss of light'. Paragraph AA.2.(3)(a)(ii) requires prior approval to be sought in relation to the external appearance of the dwellinghouse, including the design and architectural features of the principal elevation of the dwellinghouse.
9. Therefore, the main issues in this appeal are:
 - whether the proposals would constitute permitted development under Schedule 2, Part 1, Class AA of the GPDO, with particular reference to the floor to ceiling height of the additional storey;
 - whether prior approval should be granted with reference to the living conditions of neighbouring occupiers of The Sycamores with particular regard to natural light and outlook; and
 - whether prior approval should be granted with reference to the character and appearance of the dwelling and the area.

Reasons

Whether the proposals are permitted development

10. To comply with paragraph AA.1(h), the floor to ceiling height of the additional storey, measured internally, should not exceed the floor to ceiling height,

measured internally, of any storey of the principal part of the existing dwellinghouse.

11. The sectional drawings show that the ground floor of the existing dwelling has a floor to ceiling height of 2.4m. The ceiling height of the proposed additional storey is also 2.4m. Therefore, the ceiling height for the additional storey would not exceed that of any storey within the principal part of the existing dwellinghouse. Consequently, the proposal would meet the requirements of paragraph AA.1(h) and it would be permitted development. Therefore, it is necessary for me to consider the other issues in respect of this appeal.

Living conditions

12. The appeal concerns a detached bungalow. The neighbouring property, The Sycamores, is positioned alongside the appeal property and the two properties' front elevations are broadly aligned. The properties are positioned at angles so that the separation distances between the side elevations increase towards the rear of both properties.
13. The Sycamores has two ground floor windows within the side elevation fronting the appeal site. The submitted evidence indicates that the window to the rear serves a living room, which also has a large opening within the rear elevation onto its garden. Therefore, whilst the proposal would increase the eaves and ridge height of the appeal property, a good level of outlook from this room would be retained.
14. The other window within The Sycamores' side elevation serves a single aspect bedroom. The existing outlook from this window primarily looks onto an approximately 1.8m high timber boundary fence which is very close. Beyond this the flank wall and pitched roof of the appeal proposal are present in views from the window. As a result, the room does not currently have an open and expansive outlook. Whilst the additional storey would be taller than the existing building and would be seen at close quarters, the built form would not project beyond the existing footprint. Consequently, the outlook from this room would not be significantly altered to an extent that would be harmful to occupiers of the neighbouring property.
15. The appellants have submitted a DFA which provides an assessment of the impact of the proposal on the daylight levels within the three ground floor rooms nearest the appeal site. The DFA uses the Average Daylight Factor (ADF) method. The results demonstrate that each of the affected rooms would continue to receive sufficient levels of daylight when assessed using the ADF method.
16. However, the DFA is based on the 2011 edition of the BRE Site layout planning for daylight and sunlight – A guide to good practice (The BRE Guide), which has since been superseded by a 2022 edition. The BRE Guide 2022 is a comprehensive revision, and has altered the assessment of daylight and sunlight within new developments. As a consequence, the ADF method is no longer recommended by the BRE Guide 2022.
17. The Planning Practice Guidance sets out that the prior approval process is light touch with requirements that are much less prescriptive than a planning application. Paragraph 125(c) of the National Planning Policy Framework (2023) also encourages a flexible approach when applying guidance relating to

daylight and sunlight. Whilst the ADF method is no longer recommended within the 2022 BRE Guide, it does provide an empirical analysis of the effects on natural light. In addition, my assessment is based on my observations from the site visit.

18. Of the three rooms assessed, the living room is dual aspect with an additional garden facing window which would be largely unaffected, whilst the front bedroom window looks towards the main road and would also be largely unaffected. Consequently, these two rooms are unlikely to experience harmful reductions in natural light.
19. The remaining bedroom window is currently partially enclosed by the existing boundary fence separating the two properties. Whilst the additional storey would be taller than the existing building, the built form would not project beyond the existing footprint. Having regard to the height of the fence, distance to the neighbouring property's windows as a result of its angled layout and the height of the scheme, I am satisfied that the proposal would not unduly reduce light reaching habitable rooms of the neighbouring dwelling.
20. I consider that the appeal scheme would not have a significant enclosing or shading effect on the neighbouring property. Consequently, I find that the proposal would accord with the requirements of paragraph AA.2.(3)(a)(i) of Class AA.

External appearance

21. The appeal property is a detached bungalow which is situated within a small group of detached bungalows on the same side of Lingfield Road. There is, however, considerable variety in the scale, proportions, style and external materials across the bungalows within the group. In addition, in the immediate vicinity of the site, there is a wide variety of historic and contemporary properties, which include two storey terraced houses, a small three storey terrace opposite the appeal site, and a range of two storey detached properties of varying designs. The wide variety in the built form gives the area a mixed residential character.
22. The appeal property is set back further to the rear of its plot than the majority of properties on this side of Lingfield Road. Its front boundary is marked by tall hedging. These factors reduce its visibility within the streetscene and it does not have a prominent presence in views from Lingfield Road.
23. The Council have considered that an aspect of the external appearance of the dwellinghouse includes the street context and I find no reason to disregard the site's context. The proposed additional storey would result in an eaves and ridge height on the appeal property that would differ from the neighbouring buildings. However, whilst the height of the appeal property is currently broadly consistent with neighbouring properties to either side, I do not consider the character of an area can be defined so narrowly, but rather it encompasses the built form that can be seen around the appeal site.
24. Given the mixed characteristics of other properties in the vicinity of the appeal site, and having regard to the set back of the property and verdant front boundary treatment, the proposal would have an acceptable effect on the locality. While it would notably increase the scale and bulk of the property itself, there is not substantive evidence that the effects would amount to harm.

25. Consequently, I conclude that the resulting mass and scale of the appeal proposal would not be harmful to the character and appearance of the dwelling or the area, and the proposal would accord with the requirements of paragraph AA.2 (3)(a)(ii) of Class AA.

Conditions

26. Any approval granted for development under Article 3(1) and Schedule 2, Part 1, Class AA of the GPDO is subject to conditions set out in paragraph AA.2, sub-paragraphs (2) and (3). These specify that the materials used in any exterior work must be of a similar appearance to those used in the exterior of the existing dwellinghouse, the development must not include a window in any wall or roof slope forming a side elevation, the resulting roof pitch must be the same as the existing dwellinghouse, and that the development must be used as a dwellinghouse.
27. The Council suggested a condition to require the provision of a report for the management of the construction of the development. This mirrors the condition set out in paragraph AA.2.(3)(b). As this condition is automatically applied to prior approvals in Class AA it is not necessary to attach it as a separate condition.

Other Matter

28. I note the letters of objection from neighbouring occupiers. The Council have not raised any concerns in relation to the impact of the proposal on the living conditions of occupiers of 34 Lingfield Road in relation to overlooking or overshadowing. On the evidence before me, including my observations during the site visit, I see no reason to conclude differently on these matters.

Conclusion

29. For the reasons set out, I conclude that the proposal would amount to permitted development under Schedule 2, Part 1, Class AA of the GPDO and that prior approval should be given.

B Pattison

INSPECTOR