



# Appeal Decision

Site visit made on 10 October 2023

**by K Townend BSc MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24 November 2023**

**Appeal Ref: APP/Z5630/W/23/3316783**

**Tangerby House, Portsmouth Road, Surbiton, Kingston Upon Thames  
KT6 4FD**

- 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 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
- The appeal is made by Mr James Hickman of Emberton LLP against the decision of the Council of the Royal Borough of Kingston Upon Thames.
- The application Ref 22/02972/PACND, dated 15 September 2022, was refused by notice dated 10 November 2022.
- The development proposed is the erection of a single storey roof extension to existing three-storey detached block of flats (resulting in the creation of 2 no. one-bedroom flats).

## Decision

1. The appeal is dismissed.

## Background and Main Issues

2. Under 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 Order), planning permission is granted for development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats, together with ancillary matters listed in (a) to (d) of Class A.
3. Before prior approval under Class A can be evaluated, it is necessary to determine whether or not the proposal falls to be considered as permitted development against the restrictions set out in A1 of the Order. The Council accept that the development qualifies as permitted development under this class, and I find nothing that contradicts this conclusion.
4. The provisions of Class A2 of the Order require the local planning authority to assess the proposed development on the basis of ten criteria set out in A2 (1) of the Order. Based on the Council's reasons for refusal, the relevant criteria to the appeal before me are (a) the transport and highways impacts of the proposed development and (e) the external appearance of the building.
5. The Council has referenced development plan policies in its decision notice. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 20, Class A of the GPDO do not expressly or otherwise require determination of the appeal on the basis of the development plan. However, I have had regard to the policies of the development plan and the National

Planning Policy Framework (the Framework) only as far as they are material considerations relevant to the matters of prior approval specified for Class A.

6. As part of the appeal, the appellant has submitted a signed Unilateral Undertaking (UU) which precludes the future occupants of the proposed development from applying for parking permits for the Controlled Parking Zone (CPZ), unless they are entitled to as a disabled person. Although this represents a change to what was considered by the Council at the application stage the Council has provided detailed comments on the submitted UU within their evidence.
7. I do not consider that the additional information results in a substantial or fundamental change to result in a different application. Moreover, as the Council has commented, neither main party would be unfairly prejudiced and I, therefore, have had consideration to the submitted UU in determining this appeal.
8. Given the above, the main issues are:
  - the visual effect of the proposal on the external appearance of the building; and
  - the transport and highways impact of the proposed development.

## **Reasons**

### *External appearance*

9. The appeal site is an existing three storey block of flats with two flats on each floor. The existing building has an irregular rectangular footprint and a flat roof, screened behind a parapet wall. It has interesting brick banding, stone cills, repeating pattern fenestration and glazed balconies. Even if I were to accept the appellant's assertion that the building is typical of many which derive from classical language architecture, in my judgement, the existing building is of architectural interest and its 'blocky' form, as described by the appellant, is not harmful and is not 'half finished' or 'cut-off' as the appellant asserts.
10. The immediate area is residential with blocks of flats, detached and semi-detached houses. The blocks of flats differ in height and design and there is no consistent appearance. However, the character of the area is built-up, urban, and residential and the existing building respects the character of the area and does not have a negative effect.
11. Both main parties have drawn my attention to a prior approval that has recently been granted at the appeal site for the erection of a single storey roof extension to the existing three-storey detached block of flats, resulting in the creation of 2no. one-bedroom flats<sup>1</sup> (the fallback scheme). This more recent prior approval is a valid fallback position and there is a realistic possibility that the development as approved would take place should the appeal before me fail. I have, therefore, given substantial weight to the fallback scheme in considering this appeal.
12. As shown on the submitted plans and the 'Proposed Development – External Finishes Statement' the proposal in this appeal would be deliberately contrasting with the existing building with vertical features and different design

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<sup>1</sup> Council reference 23/00704/PACND

and materials. The windows would be taller and narrower than the windows in the existing building and would not be in-line with the windows in the lower floors. The existing windows are finished in white with decorative detailing suggesting smaller panes of glass. The proposed windows would be large glass panes and are finished in dark grey. Together with the different shape and position, the design and colour finish would result in significantly different windows to the existing. This, in my judgement, would be visually incongruous and harmful to the appearance of the existing elevations.

13. Moreover, the wall cladding materials proposed are substantially different in terms of colour, finish, and detailing. The use of zinc cladding with standing seam joints would emphasise the verticality of the design and the proposed cladding material would be discordant with the existing brick elevations and the design and proportions of the existing building. The proposed balconies would also be of a different size and shape to the existing, although the proposal includes obscure glazed panels and is therefore similar to the existing balconies in this regard. However, the proposed balconies would not reflect the design and scale of the existing balconies which would harm the external appearance of the existing building.
14. I acknowledge that the proposed extension would sit within the existing brick wall, is set back from the front elevation, and the roofline would not be prominent. However, due to the vertical design of the windows and contrasting materials the external appearance would not be in keeping with the existing building and would result in an inelegant, visually intrusive, and incongruous addition. The set back from the front elevation would not mitigate the harm that would result from the design and materials proposed. That the site is not within a Conservation Area and is not a Listed Building does not reduce the need for the proposal to respect the external appearance of the existing building.
15. The fallback scheme, although a modern extension, would have a simpler, lightweight, design with strong horizontal emphasis. The cladding materials would be laid in horizontal bands, the shallow pitched roof with eaves detailing finishes the top of the building in a form that respects the existing building, and the windows, albeit not including the small glazing partitions, would be of a scale and are positioned to reflect the windows in the lower floors. The approved scheme would be more subservient, integrate better with the existing building and would be less harmful to the external appearance of the existing building.
16. For the above reasons, the fallback scheme is less harmful than the appeal scheme before me. As such the fallback position does not justify the appeal proposal, which would cause greater harm to the external appearance of the building.
17. The proposed single storey roof extension would not respect the features, proportions, or materials of the existing building. As such, I find that the external appearance of the proposal would be visually harmful to the character and appearance of the existing building and would not be appropriate development when considered against A2 (1)(e) of the Order.
18. For these reasons the proposal would, insofar as they are relevant, be contrary to Policies CS8 and DM10 of the Royal Borough of Kingston Upon Thames Local Development Framework Core Strategy, 2012 (CS) which amongst other

matters, seeks to protect the character of existing buildings from inappropriate development, requires a high standard of design which respects typical details and key features, including window format, materials and design detailing of elevations, seeks to ensure that development recognises distinctive local features and character and helps to enhance urban design quality.

*Transport and highways impact*

19. The appeal site has an existing parking and turning area and is accessed off the private road of Surbiton Court, off Portsmouth Road. The appeal site itself is not within a Controlled Parking Zone (CPZ), however there are CPZs in the immediate area, where parking is for permit holders only between the hours of 10:00 and 16:00 on weekdays.
20. The proposed development would result in two additional flats and would not provide any additional car parking. The proposal would increase the risk of additional parking pressure on the nearby roads and the Council's evidence shows local concerns about congestion.
21. Although the appellant asserts that the proposal was for car free development the prior approval application was submitted without any means to secure the development would be car free, or to restrict eligibility for on-street parking permits, such as a signed Section 106 Agreement or Unilateral Undertaking (UU).
22. However, the appellant has submitted a signed UU with the appeal which was drafted in discussion with the Council. Moreover, as noted above, the Council has accepted, in their Statement of Case, that the UU is sufficient to preclude the future occupants of the flats from applying for residents parking permits within the CPZ.
23. Even if I accepted the UU would be lawful and would be sufficient to restrict on-street parking in the CPZs in the local area by the occupants of the new flats, it would not prevent the occupants from owning a vehicle or wanting to park the vehicle within the appeal site, or on the surrounding streets not covered by CPZs. This would result in additional parking pressure both within the site, where there is a limited number of parking spaces, and in the local area.
24. Notwithstanding the concerns of third-party representations, the right for the occupants to park within the site could be controlled through the future lease agreements. A condition could be used to secure such a clause into the lease agreements which would prevent any additional car parking on the site and overcome the concerns raised by the Council and third parties.
25. Although the UU and the condition could provide some element of control over parking it would not prevent the occupants parking on streets without CPZs. However, the modest scale of the development would be likely to generate a modest level of parking demand which would not likely result in severe risk to highway safety.
26. For the above reasons I find that the proposal would comply with Policies DM8, DM9 and DM10 of the LP in that the development would promote sustainable modes of travel, restrict eligibility for on-street parking permits and ensure that car parking is provided in accordance with the standards in the London Plan.

27. For the same reasons, the proposal would comply with paragraph 111 of the Framework which advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

### **Conclusion**

28. For the reasons given above, although the impact of the proposed development on transport and highway matters is not harmful, subject to the UU and condition, the proposal would not satisfy Condition A2 (1)(e) of Class O in relation to the external appearance of the building, and prior approval is not therefore given. I conclude that the appeal is dismissed.

*K Townsend*

INSPECTOR