



Appeal Decisions

Site visit made on 24 October 2023

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 5th December 2023

Appeal A Ref: APP/U5930/W/22/3313005

1-12 Serbin Close, London, E10 6JL

- 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 (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr M Hoffman against the decision of Waltham Forest London Borough Council.
- The application Ref 222749, dated 14 September 2022, was refused by notice dated 9 November 2022.
- The development proposed is the erection of an additional storey of new dwellinghouses immediately above the existing building and the reinstatement of water tanks above (to create 3 x 2-bedroom flats with roof terraces to north and east elevations. Installation of new refuse storage enclosure to match existing and cycle storage provision).

Appeal B Ref: APP/U5930/W/22/3313047

1-12 Serbin Close, London, E10 6JL

- 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 (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr M Hoffman against the decision of Waltham Forest London Borough Council.
- The application Ref 222750, dated 14 September 2022, was refused by notice dated 9 November 2022.
- The development proposed is the erection of an additional storey of new dwellinghouses immediately above the existing building and the reinstatement of water tanks above (to create 4 x 2-bedroom flats with roof terraces to East and West Elevations. Installation of new refuse storage enclosure to match existing and cycle storage provision).

Decisions – Appeals A & B

Appeal A

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3(1) and Schedule 2, Part 20, Class A, paragraph B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the erection of an additional storey of new dwellinghouses immediately above the existing building and the reinstatement of water tanks above (to create 3 x 2-bedroom flats with roof terraces to north and east elevations. Installation of new refuse storage enclosure to match existing and cycle storage provision) at 1-12 Serbin Close, London, E10 6JL in accordance with the application Ref 222749, made on 14 September 2022, and

the details submitted with it, pursuant to Article 3(1) and Schedule 2, Part 20, Class A.

- 1) No development shall take place until arrangements shall have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which shall have been approved in writing by the local planning authority. The approved scheme or agreement shall ensure that:

- (i) no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the local planning authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation); and

- (ii) any occupiers of the approved development shall surrender any such permit wrongly issued or held.

Such scheme or agreement shall be implemented prior to first occupation of the development hereby granted prior approval and shall be retained and operated for so long as the use hereby permitted continues.

Appeal B

2. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3(1) and Schedule 2, Part 20, Class A, paragraph B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the erection of an additional storey of new dwellinghouses immediately above the existing building and the reinstatement of water tanks above (to create 4 x 2-bedroom flats with terraces on the western elevation. Installation of new refuse storage enclosure to match existing and cycle storage provision) at 1-12 Serbin Close, London, E10 6JL in accordance with the application Ref 222750, made on 14 September 2022, and the details submitted with it, pursuant to Article 3(1) and Schedule 2, Part 20, Class A and subject to the following condition:

- 1) No development shall take place until arrangements shall have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which shall have been approved in writing by the local planning authority. The approved scheme or agreement shall ensure that:

- (i) no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the local planning authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation); and

- (ii) any occupiers of the approved development shall surrender any such permit wrongly issued or held.

Such scheme or agreement shall be implemented prior to the occupation of the development hereby granted prior approval and shall be retained and operated for so long as the use hereby permitted continues.

- 2) Notwithstanding the submitted plans the terraces serving the proposed flats on the eastern side of the building shall not be implemented and prior to first occupation of these flats the doors shown leading to these terraces shall be changed to windows in accordance with details that have first been submitted to and approved in writing by the local planning authority.

Applications for costs

3. In relation to both appeals an application for costs was made by the appellant against Waltham Forest London Borough Council. These applications are the subject of separate decisions.

Main Issues

4. Article 3(1) of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') provides that, subject to the provisions of the GPDO, planning permission is granted for the classes of development described as permitted development in Schedule 2.
5. Class A, Part 20 of Schedule 2 relates to new dwellinghouses on detached blocks of flats. Subject to compliance with the limitations, restrictions and conditions that relate to this class, proposals to add dwellings on to an existing apartment building are therefore permitted development.
6. In relation to the proposed development that is the subject of each appeal, the Council determined that prior approval was required as to the external appearance of the building and refused prior approval. In relation to the proposal in Appeal B, the Council also determined that prior approval was required for its impact on the amenity of neighbouring premises and refused that approval.
7. Based upon these reasons for refusal, the main issue in Appeal A is the effect of the proposed development on the external appearance of the building. This also forms the first main issue in relation to Appeal B. The second main issue in relation to appeal B is the effect of the proposed development on the amenity of the neighbouring premises and existing building.

Reasons

Appeals A & B

External Appearance

8. Serbin Close is a rectangular residential cul-de-sac containing two detached blocks of flats. Set within open lawns the design of the flat fronted and flat roofed blocks reflects their era of construction in the early 1970s. In contrast, other than for a commercial premises, the Close is enclosed on four sides by traditional, pitched roofed, terraced housing that faces outwards away from Serbin Close and appears to date from the late nineteenth and early twentieth century. The two types of housing therefore have quite different appearances, and other than for glimpses along the entrance to the Close and between terraces, they do not form part of the same street scene.
9. As a result, for the purposes of this appeal, the external appearance of the proposed developments should largely be considered in relation to the Serbin Close street scene. The block which is the subject of the appeal is three storeys

high, whilst the other block is two storeys tall. The proposed development would add one additional floor to the taller building to create a four storey structure which would be approximately twice the height of its neighbour. However, an extant permission was granted in 2022 to add 3 further flats to the smaller building by the addition of a new top floor. This is an important material consideration. Given the extra value the additional floor in the extant permission would add to the building, it is reasonable to believe that this permission will be implemented.

10. In terms of scale, in the context of a three storey neighbour, the addition of a fourth storey to the appeal building would be complementary and maintain the current relationship of one block being taller than the other. Moreover, the setback of the appeal block within the site, its enclosure by tall trees on its eastern side, and the degree of separation from surrounding houses to the north and west, means that in views from Serbin Close the taller building in both appeals would appear comfortably set within its plot and surroundings.
11. With regard to views from the surrounding streets, in the context of the significant separation distance that exists, and the enclosing effect of the terraced housing, in the limited public views that would occur the increase in height of the block of flats would be insufficient for the proposals to have a material adverse effect on the street scene.
12. The appeals would differ visually in that Appeal A would have two rear facing roof terraces with two terraces on the western side elevation, whilst in Appeal B the roof terrace would be replaced by an additional flat and terraces would be present on both sides of the new storey. In terms of external appearance of the building, both approaches would be acceptable. The submitted plans show that in both appeals the dimensions of the proposed windows and brickwork would match the existing building. Ensuring that the colour and nature of the external materials used complements the building is a matter that could be secured by condition.
13. For the reasons given above, I therefore find that the proposed additional floor in both schemes would complement the external appearance of the building and its surroundings.

Appeal B

Amenity

14. Small terraces forming part of the additional storey on both sides of the building are shown on the plans submitted with the application in Appeal B. The two eastern terraces incorporated into the additional floor would face the rear gardens of the houses along Lambourne Road. Owing to the appeal block being angled more towards these houses than the other block, a significantly greater potential exists for overlooking, and the perception of overlooking, from these terraces.
15. During the warmer months of the year, when the proposed eastern terraces and the rear gardens along Lambourne Road are most likely to be in use, tall mature trees along the common boundary act as a screen. However, as the nearest trees are touching the flank of the appeal block, it is reasonable to assume that these trees will be pruned. This may well reduce their effectiveness as a screen. Moreover, as the trees are located within Serbin

Close the occupiers of the affected dwellings on Lambourne Road have no control over whether the trees will be retained in the future.

16. The western terraces would face the rear gardens of houses at a similar angle to the eastern terraces. However, with approximately twice the separation distance, and the presence of a large tree with dense branches in the intervening gap, no material overlooking would occur. Furthermore, as the tree referred to is within the corner of a garden of one of the houses surrounding Serbin Close its retention, and thus its screening effect, is within the control of the nearest overlooked neighbour.
17. The potential for harmful overlooking caused by the terraces on the eastern side of the building could be addressed by the use of an appropriately worded condition that requires that they are replaced by suitably designed windows. This would be a minor change and the nature of local residents' concerns are clear from the consultation responses received in relation to the application and at appeal stage when the appellant suggested that terraces could be deleted to address this issue. As a result, I do not consider that the interests of third parties would be prejudiced if the eastern terraces were replaced by windows.
18. In relation to daylight and sunlight, the submitted technical reports demonstrate that the levels of natural light experienced by surrounding dwellings will be acceptable and I agree with that assessment. With regard to noise, given the small size of the terraces there is no good reason to believe that levels would be out of keeping with the residential nature of the area which is characterised by far larger outdoor amenity areas that can accommodate far more activity. In relation to outlook, the increase in height of the block would be insufficient to result in it becoming overbearing to the occupiers of neighbouring dwellings.
19. Taking all these matters into account, subject to the use of the condition described, I therefore find that the proposed development would not result in an unacceptable risk of overlooking and loss of privacy.

Other Matters

20. Concerns have been expressed in relation to both appeal proposals regarding construction traffic as well as noise, dust and disturbance from construction works. This matter is addressed by condition A.2 (3) of the GPDO. It requires that before development begins a construction management report is provided to the Council which sets out the hours of construction and how any adverse impacts regarding the matters concerned would be mitigated.
21. As many of the local houses were constructed before widespread car ownership, they have no off road parking and the local highway network has a limited capacity to accommodate on-street parking. A Controlled Parking Zone has therefore been established which restricts parking on the highway to local residents within identified bays. By managing parking in this way road junctions are kept free of parking which improves the safety of highway users and aids the flow of traffic. With private parking on Serbin Close provided at a ratio of one space per existing flat, and only a few off road spaces for visitors, should future occupiers of the proposed flats have cars there is insufficient on-site parking provision for them.

22. In relation to both Appeal schemes, no additional car parking is proposed. Instead the appellant would provide enclosed cycle parking spaces. In order to ensure that both developments would not increase the demand for on-street parking, and thereby increase the likelihood of parking at times when enforcement is unlikely to the detriment of highway safety and the free flow of traffic, it is therefore necessary to ensure that if either of the appeals are allowed future residents are not eligible for parking permits. This could be secured by the use of an appropriately worded condition.

Conditions

23. Paragraph B (18) allows the decision maker to grant prior approval subject to conditions reasonably related to the subject matter of the prior approval. In order to ensure that the materials used in the construction of the extensions in both schemes complements the existing building further details are needed.
24. Given the pressure on on-street parking, in the interests of highway safety and the free flow of traffic, future residents of the flats need to be prevented from being able to apply for on-street parking permits.
25. The Council has suggested a negatively worded condition to address this matter that would require a planning obligation or other agreement to be entered into with the Council before development commences. Planning Practice Guidance (PPG) advises that normally such agreements should be entered into prior to a decision on an application and that conditions should only be used in exceptional circumstances. In my judgement, given the adverse effect of intensifying residential occupation on the operation of the Controlled Parking Zone, and on highway safety and the flow of traffic which such zones seek to protect, the development would not be acceptable unless this matter was properly addressed. For this reason, and given the expedited nature of processing applications made under the GPDO, I find exceptionally that it is appropriate that this matter should be dealt with by way of a negatively worded condition.
26. In Appeal B, to protect the amenity of the occupiers of Lambourne Road, the terraces on the eastern flank wall of the new storey need to be removed. I have required this matter by condition and have amended the description of the additional storey of dwellinghouses used in the permission to reflect this.
27. I have required all these matters by condition, revising the conditions suggested by the Council where necessary to reflect the advice contained within PPG.
28. The Council has suggested a condition listing the plans that the developments should be carried out in accordance with. However, as the GPDO provides that development must be carried out in accordance with the approved details such a condition is unnecessary. Similarly, as the submission of a Construction Management Plan is a condition of Part 20, Class A it would be unreasonable and unnecessary to impose the same condition again.
29. The appellant should note that the GPDO requires at paragraph A.2 (2) & (3) that development must be completed within 3 years of the date that prior approval is granted and that a construction management report must be provided to the Council before development commences. Paragraphs (4), (5) and (6) require that the Council must be promptly notified in writing of the

completion date of the development, the name of the developer and that the additional flats created (Class C3 dwellinghouses) shall not change use.

Conclusion

30. For the reasons given above, I conclude that the appeals should be allowed and that prior approval should be granted.

Ian Radcliffe

Inspector