



Appeal Decision

Site visit made on 17 October 2023

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2024

Appeal Ref: APP/U5930/W/23/3318995

Hedgemoor Court, 24 Castle Avenue, Chingford, Waltham Forest E4 9QE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 Arthur Alexander Properties Ltd against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 223568, dated 20 December 2022, was refused by notice dated 7 February 2023.
 - The development proposed is the construction of two additional storeys above Hedgemoor Court to provide 6 new flats.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the construction of two additional storeys above Hedgemoor Court to provide 6 new flats at Hedgemoor Court, 24 Castle Avenue, Chingford, Waltham Forest E4 9QE in accordance with the terms of the application ref 223568, dated 20 December 2022, and the plans submitted with it including: P001/-, P002/A, P100/-, P101/-, P102/-, P103/-, P202/-, P205/, P220/A, P221/-, P222/A, P223/A, P250/B, P300, P120/A, P121/A, P122/A, P123/A, P150/B, P203/A and P204, subject to the conditions set out in the attached schedule.

Preliminary Matters

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 issue in this case.
3. An amended version of the National Planning Policy Framework (the Framework) was published in December 2023. In the interest of natural justice and to ensure neither of the main parties were prejudiced by this matter, I consulted both parties on the changes to the Framework, and this has informed my determination of the appeal.

Main Issue

4. The main issue is 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.

Reasons

5. The appeal site is a three-storey block of flats set within a large landscaped plot with garages to the rear. The appeal site is located on Castle Road which slopes up towards the site from The Avenue and is predominantly residential. The road is lined with mature trees and many of the houses have landscaped front gardens, which results in a leafy and verdant character and appearance.
6. The principle of extending upwards is established through Part 20, Class A of the GPDO and while this may result in differences in height to nearby buildings this is an inevitable consequence of the permitted development right. However, condition A.2(1)(e) of Schedule 2, Part 20, Class A concerns the external appearance of the building, as such a further assessment is required.
7. The GPDO does not define external appearance for the purposes of assessing this prior approval matter, but the *Cab Housing Ltd*¹ judgement has established that consideration of external appearance under the various classes of Part 20 of the GPDO is not confined to an assessment of the impact on the appearance of the building itself, but also includes impact on neighbouring premises and the locality. It is a matter of planning judgement as to whether consideration is given to the effect in terms of the building's intrinsic design and/or to the effect in terms of the building's relationship with nearby properties.
8. The proposal seeks to raise the height of the building by two additional storeys to facilitate six flats. The proposal would generally match the existing building in design, including materials and fenestrations.
9. A previous appeal² has already been considered for the site in which the Council refused prior approval for several reasons, including the same reason outlined in the Council's reason for refusal for the appeal in front of me. In the previous appeal the Inspector found that the additional brick courses between the third and fourth floors would give the proposal a stretched appearance. The appellant has sought to rectify this by removing the additional courses and as such, the extended building is now predominantly uniform in appearance between these floors.
10. The Council consider that the scale, bulk, height and design are still unacceptable. I note that the Council consider that as the additional floors would not be set in and there would be no set back to the rear and sides, the additional floors would be unsympathetic and not subservient. However, if the additional floors were set in and set back to the side and rear, the design of the proposal would appear unusual and stand as an incongruous feature in the street scene. Instead, I find that the uniform appearance of the proposed additional floors would result in a proposal that sits well within the street scene.
11. I therefore conclude that the proposal would have an acceptable external appearance, having particular regard to its effect on the character and appearance of the area.

¹ *Cab Housing Ltd & Ors v Secretary of State for Levelling Up, Housing and Communities & Ors* [2022]

² APP/U5930/W/21/3279947

Other Matters

12. The appeal site falls within the zone of influence for the Epping Forest Special Area of Conservation. Article 3(1) of the GPDO grants planning permission for Schedule 2 Part 20 Class A development subject to Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017.
13. Regulation 75 provides that it is a condition of the planning permission granted by the GPDO in these cases, that development which is (a) likely to have a significant effect on a European site or offshore marine site, alone or in combination with other plans or projects and (b) not directly connected with or necessary to the management of the site, must not begin until the developer has received written notification of the approval of the LPA under Regulation 77.
14. Under Regulation 78(3)(a), a Regulation 75 approval is to be treated as an approval required by a condition imposed on a grant of planning permission for the purposes of the appeals provisions of the GPDO. As such, Article 3(1) effectively imposes a pre-commencement condition on all development that is permitted by the GPDO and would affect a European protected habitat and the proposed development could not be lawfully begun until the process set out in Regulation 77 has been completed.
15. I have given careful consideration to the concerns raised by interested parties which include loss of outlook, sunlight, daylight and privacy, the size of the proposed flats, noise, parking and highway safety. The Council have found that the proposal would provide acceptable living conditions for existing, neighbouring and future occupiers, that acceptable parking would be provided and no harm would be caused to highway safety. I have no reason to conclude against the Council for these matters and as such I have not sought to explore them further.
16. I have been referred to an appeal decision at De Le Warr Court however I have not been provided with the full details of this appeal, so it is difficult to draw comparisons to the appeal proposal. In any event, the context of each site is different and each proposal must be considered on its own merits.
17. Concerns have been raised that neighbouring occupiers are entitled to quiet enjoyment under English common law as well as that the building is not structurally sound, has had subsidence in the past and the foul drainage is inadequate. However, these matters would be covered under separate legislation.

Conditions

18. Planning permission granted for development under Article 3(1) and Schedule 2, Part 20, Class A of the GPDO is subject to conditions set out in paragraph A.2 of that Class which specify that:
 - The development must be completed within a period of 3 years starting with the date prior approval is granted.
 - before beginning the development, the developer must provide the local planning authority with a report for the management of the construction of the development, which sets out the proposed development hours of

operation and how any adverse impact of noise, dust, vibration and traffic on occupiers of the building and adjoining owners or occupiers will be mitigated.

- the developer must notify the local planning authority of the completion of the development as soon as practicable after completion and the notification must be made in writing and include the name of the developer, the address or location of the development and the date of completion; and
- any new dwellinghouse is to remain in use as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse.

19. Paragraph B (18) of Part 20, Class A states that the local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The Council has suggested conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have made amendments where necessary for clarity and consistency purposes.
20. Given the conditions laid out above, it would be unnecessary to duplicate a condition requiring development to be completed within a period of 3 years, require a report for the management of the construction of the development as well as to require the use to remain as a dwellinghouse. I have also not sought to require details of external lighting as no external lighting is proposed.
21. Condition 1 specifies the approved plans for the avoidance of doubt. Condition 2 would be necessary in the interests of highway safety and to protect the amenity of the existing and neighbouring occupier during construction. Condition 3 is required in order to ensure satisfactory cycle parking and refuse and recycling facilities are provided for future occupiers.

Conclusion

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

D Wilson

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall only be carried out in accordance with drawing numbers P001/-, P002/A, P100/-, P101/-, P102/-, P103/-, P202/-, P205/, P220/A, P221/-, P222/A, P223/A, P250/B, P300, P120/A, P121/A, P122/A, P123/A, P150/B, P203/A and P204.
2. No development shall take place on site whatsoever, until a Construction Logistics Plan has been submitted to and approved in writing by the local planning authority. The logistics plan shall include details of site access, journey planning, access routes, hours of delivery, temporary traffic arrangements or restrictions, site operation times, loading and unloading locations and material storage. All works shall be carried out in accordance with the approved details throughout all construction works.
3. Prior to the commencement of the development, full details relating to the following shall be submitted to and approved by the Local Planning Authority:
 - a) Cycle parking and cycle storage facilities
 - b) Refuse and recycling facilities

The development shall be carried out fully in accordance with the approved details prior to first occupation of the development and shall be thereafter maintained as such for the lifetime of the development.