



Appeal Decisions

Site visit made on 15 November 2023

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2024

Appeal Ref: APP/M1520/W/22/3311656

110-112 Oak Court, Rayleigh Road, Thundersley, Benfleet SS7 3YS

- 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 GPDO').
 - The appeal is made by Mr and Mrs Choppen against the decision of Castle Point Borough Council.
 - The application Ref 22/0312/CPA, dated 4 April 2022, was refused by notice dated 4 July 2022.
 - The development proposed is addition of two floors to existing apartment block to create 3 new flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the description of the proposal is unclear from the application form, I have taken this from the Council's decision. This is also consistent with the description provided on the appellants' appeal form.
3. The Council has referred to development plan policies in its decision notice. Since it is Article 3(1) of the GPDO which permits the classes of development set out in Schedule 2, an application for prior approval, or for a determination as to whether prior approval is required, is not an application for planning permission. It is an application made to comply with a 'pre-commencement' condition attached to that permission under the relevant Class.
4. As such, the GPDO does not require that regard be had to the development plan. I have nevertheless had regard to the policies of the development plan only in so far as they are a material consideration relevant to matters of prior approval.
5. Similarly, Paragraph(15)(b) of part 20 of the GPDO requires the decision-maker to have regard to the National Planning Policy Framework, in so far as relevant to the subject matter of the prior approval, as if the application were a planning application.
6. Since the Council determined the application, an updated version of the National Planning Policy Framework, December 2023 ('the Framework') has been issued. I have consulted the main parties on this and had regard to any representations received.

7. In support of this prior approval application, the appellants have also submitted an application for planning permission Ref 22/0311/FUL, for the formation of additional parking spaces at the appeal site. This planning application was also refused by the Council and the separate appeal in respect of this is also before me.

Background and Main Issues

8. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('GPDO') under Class A of Part 20 of Schedule 2, sets out that the following development is permitted: 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, subject to certain conditions and limitations.
9. Firstly, the Council argues that the proposal fails to comply with a limitation under Class A of the GPDO, with regard to the floor to ceiling heights of the additional storeys.
10. Furthermore, Paragraph A.2 (1) of the GPDO indicates that Class A development is permitted subject to the condition that before beginning the development, the developer shall apply to the local planning authority for a determination as to whether the prior approval of the authority will be required for certain matters.
11. The Council has raised issues with regard to prior approval matters: (a) transport and highways impacts of the development and (e) the external appearance of the building.
12. Accordingly, the main issues are:
 - whether the proposed development falls within the terms of the permitted development rights under Class A of Part 20 of Schedule 2 of the GPDO, with specific regard to floor to ceiling heights of additional storeys; and
 - if so, whether prior approval should be granted in respect of (a) transport and highways impacts of the development and (e) the external appearance of the building.

Reasons

Compliance with Paragraph A.1 (e) of Class A of Part 20 of Schedule 2

13. Paragraph A.1 (e) of Class A of Part 20 of Schedule 2 to the GPDO states that development under Class A is not permitted if the floor to ceiling height of any additional storey, measured internally, would exceed the lower of 3 metres or the floor to ceiling height of any storey of the principal part of the existing building.
14. The application submissions confirm that the floor to ceiling height of the additional floors (measured internally) would be the same as the floor to ceiling height of the existing storeys below at 2.350m. The submitted drawing Ref RR/NAK/02C shows a set of elevations at a scale of 1:100 complete with a scale bar and a dimension notation, which identifies that the two additional floors would increase the height of the building by 5.150m. On this basis, I am

satisfied that the additional storeys would not exceed the floor to ceiling height of any storey of the principal part of the existing building.

15. As such, the proposal would not conflict with Paragraph A.1 (e) of Class A of Part 20 of Schedule 2 of the GPDO.

Transport and highways impacts of the development.

16. Based on the Council's parking standards, the proposed additional flats generate a requirement for 6 parking spaces (2 parking spaces per flat).
17. The permitted development regulations under Class A of Part 20 of Schedule 2 of the GPDO, do not allow for the works associated with the creation of the required vehicle parking area. Accordingly, planning application Ref 22/0311/FUL, was submitted at the same time to be assessed in connection with the proposed change of use under the prior approval application.
18. Had the full planning application Ref 22/0311/FUL, been acceptable and the approved drawing(s) submitted as part of this prior approval application, there is nothing to suggest that a negatively worded condition could not be used to prevent occupation of the proposed flats until the approved additional parking works had been carried out. Nevertheless, I have dismissed the appeal in respect of planning application Ref 22/0311/FUL.
19. Notwithstanding the above, the appeal site is just under 500m from the nearest bus stop on Kiln Road (A13). The route to this bus stop is reasonably direct and along roads with street lighting. This bus stop is also near a parade incorporating a range of shops and services. Furthermore, this location is close to bus routes leading into Hadleigh Town Centre, where there is a wider range of shopping and other services.
20. Therefore, residents of the proposed scheme would be able to access public transport on foot with access to a reasonable range of services within walking distance. Even so, this level of accessibility does not justify the provision of three dwellings without any vehicle parking and support for alternative transport such as cycling.
21. As such, the proposal is likely to generate some demand for vehicle parking but I am not convinced that this would be for 6 additional vehicles. Despite this, on the evidence before me, I am not certain that this would not lead to inappropriate parking on the nearby roads, to the detriment of the safety of highway users. Indeed, the Framework seeks to create places which minimise the scope for conflicts between pedestrians, cyclists and vehicles.
22. Consequently, I find conflict with Policy EC2 and T8 of the New Castle Point Local Plan 2018-2033, March 2022 ('LP'), in so far as these are material to considering the transport and highways impacts of the development.

The external appearance of the building

23. The appeal relates to a 3-storey building ('Oak Court') which is set back from the highway behind a mainly lawned frontage. Oak Court is mainly finished in brickwork and of a similar traditional style to other nearby flatted developments. These developments are also located behind lawned frontages. As such, the appeal building is settled within and complements the wider street

- scene. Despite this, the appeal property is a detached building along a main road and is prominent.
24. The proposed fourth floor of additional accommodation reflects the design, materials and fenestration of the existing building.
 25. The fifth floor ('top floor') of accommodation would be set in from the sides to reduce its massing. Even so, this would be in line with the front of the building and therefore is a clear continuation of the existing building.
 26. Despite some attention to fenestration details and arrangements, the proposed anthracite aluminium panelling for the upper floor would be of a contemporary appearance and does not reflect the traditional design and appearance of the existing building.
 27. Although the top floor is designed to be different, in terms of good design, this should also complement the host building, in this case the proposed cladding fails to do so. Therefore, in my view, the proposed top floor would not complement Oak Court and would appear unacceptably incongruous.
 28. Whilst there would be an inevitable increase in the height of the building, this to an extent would be absorbed by its set back from the highway and taller building to the south. Also, the generous gaps to the side of the building would assist in mitigating its increase in height, whilst also retaining views of the building's woodland backdrop.
 29. Nevertheless, the increase in height in combination with the stark appearance of the proposed top floor of Oak Court, would add to the incongruity of the external appearance of this, which would unacceptably detract from its appearance and the character and appearance of the area.
 30. The appellant has referred to other examples of buildings with in the area, Whilst I do not have the full details and context of these, I have considered these. The building identified as 'Hockley' is of a contemporary style and the upper floor cladding and fenestration complements this.
 31. On the building identified as 'Southend' the upper floor reflects the fenestration and rendered finish utilised on its lower elevations.
 32. The top floor of 'Hadleigh (Castle Point)' comprises a mansard roof which incorporates fenestration and doors which reflect those on the lower floors of this building. Moreover, the extent of the mansard roof is screened by the parapet feature of this building and therefore is not unduly prominent.
 33. In the above examples, the upper floors/roofs complement the designs of their respective buildings. As such, these examples do not alter my findings on the external appearance of the scheme before me.
 34. In particular, the Framework states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. As such, I attach significant weight to the harm associated with the external appearance of the building.
 35. Accordingly, I find conflict with Policy EC2 of the LP, in so far as this is material to considering the external appearance of the building.

Other Matters

36. The Council has not demonstrated in this appeal that it has a 5-year housing land supply. Consequently, the appellant asserts that paragraph 11(d)(ii) of the Framework applies. This requires that permission be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed the policies in the Framework, taken as a whole ('the tilted balance').
37. As already stated, in this case, because the application is for a determination as to whether prior approval is required, this is not an application for planning permission. As such, and having regard to Paragraph(15)(b) of part 20 of the GPDO, the tilted balance does not apply.
38. Even if I were to apply the tilted balance, I have found that the proposal would harm the external appearance of Oak Court and the area. Also, I cannot be certain that the proposal would not lead to inappropriate parking on the nearby roads, to the detriment of the safety of highway users. I attach significant weight to such harm. Whilst there would be some social and economic benefits associated with additional housing. Given that the proposal would only deliver three additional dwellings, the benefits associated with this are likely to be limited. Therefore, the adverse impacts I have identified would significantly and demonstrably outweigh the benefits.

Conclusion

39. For the above reasons, prior approval for (a) transport and highways impacts of the development and (e) the external appearance of the building, is not given and therefore the appeal should be dismissed.

M Aqbal

INSPECTOR