



Appeal Decisions

Site visit made on 10 October 2023

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 06 February 2024

Appeal A Ref: APP/P5870/W/23/3320631

Orchard Court, Parkgate Road, Wallington, Sutton SM6 0AN

- 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 Concrete Investments Ltd against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2022/02267, dated 20 December 2022, was refused by notice dated 9 February 2023.
 - The development proposed is prior approval for the construction of one additional floor (4xflats) on top of the existing four storey building, using permitted development (PD) rights.
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Appeal B Ref: APP/P5870/W/23/3320647

Orchard Court, Parkgate Road, Wallington, SM6 0AN

- 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 Concrete Investments Ltd against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2022/01649, dated 2 September 2022, was refused by notice dated 2 November 2022.
 - The development proposed is prior approval for the construction of two additional floors (8 x flats) on top of the existing building, using permitted development (PD) rights.
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Decisions

Appeal A Ref: APP/P5870/W/23/3320631

1. The appeal is dismissed.

Appeal B Ref: APP/P5870/W/23/3320647

2. The appeal is dismissed.

Preliminary Matters

3. As set out above, there are two appeals on this site. They differ in that Appeal A seeks prior approval for one additional floor on top of the existing building and Appeal B seeks approval for two additional floors. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
4. The appeals are made pursuant to Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015

as amended (GPDO). This permits 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, as well as certain associated works.

5. For development to be permitted by Class A, it must satisfy limitations set out at paragraph A.1, and conditions at paragraph A.2. These conditions establish a requirement for developers to apply to the local planning authority for a determination as to whether prior approval will be required in relation to a number of specified matters. In determining such an application, paragraph B(15) requires the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework (the Framework), so far as relevant to the subject matter of the prior approval, as if the application were a planning application. I have considered the appeal on the same basis.
6. A revised version of the Framework was published in December 2023, after the appeal was lodged. As paragraph 124 e) refers to mansard roof extensions, it has been necessary to request observations from the main parties with regard to Appeal A. No further comments were, however, received.
7. The prior approval provisions do not require regard to be had to the development plan. 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. In this case it is the Sutton Local Plan 2016-2031, (SLP), 2018, and The London Plan, (LP), 2021.
8. The Council was satisfied that both proposals met the limitations set out in paragraph A.1 and would be permitted development, which I have no reason to dispute.

Background and Main Issue

Appeal A

9. The Council refused the application for prior approval with regard to the effects of the proposal on the external appearance of the building; and that the space within the 2 bed 3 person units would not comply with the nationally described space standard. The Council now consider that all the proposed flats would comply with the required standard. I see no reason to disagree.

Appeal A and B

10. Therefore, I consider that the main issue in respect of both appeals is whether prior approval should be granted having regard to the effect of the proposals on the external appearance of the building.

Reasons

11. Orchard Court is a four-storey, detached, modern block of flats with a flat roof. Externally, the building is finished in two different colours of brick, with some cladding on the front and rear. It contains 16 self-contained flats. The building is sited at an angle to Parkgate Road which it faces, but it is also close to the junction of Manor Road, the A237.
12. The building is within an area containing several blocks of flats, which from my observations on site, appear to be mainly of three or four storeys, with flat

roofs, like Orchard Court. These are located off Manor Road and Springfield Road to the rear. The exception is the adjoining building, Burnston Court, which has hipped roofs and gables. This building appears to be three storeys in height with further accommodation in the roof, as evidenced by the dormer windows. Opposite the site and in adjoining streets, there is traditional, two-storey housing in different styles and periods. The flats, together with the adjoining housing, provides a harmonious residential character to the area.

Appeal A: one additional storey

13. The proposal, which would repeat the fenestration pattern as found on each of the elevations, would be slightly inset from the edges of the building, located behind a parapet. It would slope inwards and would be finished in vertical panel cladding. The form of this would be uncharacteristic of the existing building. It would add a bulky element to the block, which, because of the flank elevation facing towards both Parkgate Road and Manor Road would make it highly visible and give it a top-heavy appearance. Whilst the appellant considers that the vertical cladding would reduce its prominence when viewed against the sky, vertical cladding is not a feature of the area. Moreover, from the angles that it would be viewed, it is unlikely that the material alone would create such an effect. Furthermore, it would not integrate well with the pale brick and would appear incongruous in this location.
14. The appellant has provided some examples of buildings where contrasting materials have been used, but from the evidence provided, these would appear to relate to new builds rather than adding an additional storey to an existing building. Whilst both metal cladding and a setback to the roof is frequently used for roof top additions, this is not a characteristic of the housing around Orchard Court. Furthermore, it would highlight the difference between this building and the similarly designed, flat roofed buildings that surround the block.
15. Whilst the appellant has suggested that the roof material could be amended if it would make the proposal acceptable, a different roof material is not part of the proposal and nor has it been subject to appropriate consultation. Consequently, this is not a matter that I can consider as part of this appeal.

Appeal B: two additional storeys

16. The proposal would have a flat roof and would repeat the existing fenestration pattern. Moreover, it would be constructed using the existing materials so that the external appearance in its narrowest meaning, would be the same as the existing building. However, adding two further storeys would result in the proposal dominating those buildings around it. Whilst it would mirror the existing design of the building, the creation of two additional floors would increase the prominence of the building in this location. At six storeys, with no other buildings of this size and height in the immediate area, it would create an incongruous feature in this locality. Furthermore, being sited close to traditional two-storey dwellings, the building would appear overly prominent. This would be harmful to the character and appearance of the area.

Appeal A and B

17. The parties were given the opportunity to comment on the judgment in *Cab Housing Ltd v SSHCLG* [2022] EWHC 208 (Admin), [2023] EWCA Civ 194 (*Cab*

Housing) which was confined to the lawfulness of the decisions under challenge. This does, however, confirm that the control of the external appearance of the dwelling is not limited to the impact on the subject property itself, but can also include the impact on neighbouring premises and the locality. It is therefore a matter of planning judgment when considering external appearance as to the visual impact of the proposal on both the building and the adjoining area.

18. Based on this judgment, and the surroundings of the site, I consider that both proposals would harm the external appearance of the building and, in addition, the effect on the character and appearance of the area is also relevant.
19. The site is visible from the Park Road/Melbourne Road Areas of Special Local Character (ASLC) and the Springfield Road/Grosvenor Road ASLC, although it is outside any ASLCs. Whilst flat roofed blocks of flats are characteristic of this locality, Orchard Court, unlike other blocks in the area, is sited at an angle and close to the junction of the adjoining roads, and therefore has a greater prominence. This is compounded by the generous landscaping to the front and side, where there are extensive lawns. The construction of additional storeys to the building would therefore appear discordant with those of a similar style.
20. The building also appears from some views of the site, to stand alone. The proposed additions to the building would, therefore, result in it being much higher than surrounding buildings and make it more prominent. This would particularly affect the surrounding two-storey housing, resulting in it appearing overly dominant in this location. This would be harmful to the character and appearance of the area.
21. In conclusion, the creation of either one or two additional storeys would cause harm to the external appearance of the building. This would therefore conflict with chapter 12 of the Framework which seeks to create high quality, beautiful and sustainable buildings. It would also not accord with Policy 28 of the SLP and Policies D3 and D4 of the LP which collectively seek to ensure that new development is of good design that respects the local context and responds to local character.

Other Matters

22. The appellants have submitted several appeal decisions which all date to 2021. These decisions give a narrow interpretation of the external appearance of the building, and pre-date *Cab Housing*. Following this judgment, I consider that the wider interpretation is correct which I have taken into account in coming to my decision.
23. The appellant has also provided examples of consents granted in the area that they consider are relevant to this case. However, as no substantive evidence on these consents is before me, I cannot be certain whether they are directly comparable to the appeal case.
24. The site is in an Area of Potential Intensification and Area of Taller Building Potential. The appellant has submitted a context map comparing the height of buildings in the vicinity of the site. This shows that most buildings are 3 or 4-storeys in height, particularly those that are more closely embedded within existing residential areas. Whilst the development near Trinity Church has been referenced, this would appear, from the evidence before me, to also largely be

4-storeys in height, although I could see that there are blocks with windows in the roof. Buildings closer to the railway station and the centre of Wallington, flanking the main road are generally taller. This suggests that there is a hierarchy of building heights in the area, with the height increasing from more overly residential areas to those in the centre of town.

25. Although third-parties have provided comments, the matters raised do not affect my consideration of these cases against the requirements of the GPDO.

Conclusion

26. For the reasons given above, I conclude that both appeals are dismissed.

M J Francis

INSPECTOR