



Appeal Decisions

Site visit made on 16 January 2024

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th March 2024

Appeal A Ref: APP/T2215/W/23/3326555

11-27 Hythe Street, Dartford DA1 1AB

- 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 AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Kallarview Homes against the decision of Dartford Borough Council.
 - The application Ref DA/23/00483/P20AA, dated 18 April 2023, was refused by notice dated 21 June 2023.
 - The development proposed is upward extension of 1 storey to provide 7 residential flats (C3) above the existing commercial building.
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Appeal B Ref: APP/T2215/W/23/3320655

11-27 Hythe Street, Dartford DA1 1AB

- 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 AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Kallarview Homes against the decision of Dartford Borough Council.
 - The application Ref DA/22/00925/P20AA, dated 29 July 2022, was refused by notice dated 22 February 2023.
 - The development proposed is construction of two additional storeys to provide 14 dwellings on detached building in commercial or mixed use.
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Decision

1. Appeal A is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for upward extension of 1 storey to provide 7 residential flats (C3) above the existing commercial building at 11-27 Hythe Street, Dartford DA1 1AB in accordance with the terms of the application, Ref DA/23/00483/P20AA, dated 27 April 2023, subject to the conditions in the schedule at the end of this decision.
2. Appeal B is dismissed.

Preliminary Matters

3. Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) applies to detached buildings only. For the purposes of the GPDO “detached” means that the building does not share a party wall with a neighbouring building. There is

no definition of what constitutes a party wall within the GPDO. The Council has referred to the Royal Institution of Chartered Surveyors (RICS) definition of a detached building as one that does not share outside walls with another.

4. The appeal building adjoins buildings on either side, however the appellant maintains that it does not share a party wall. I saw on my site visit that the appeal building appears to benefit from its own external walls on either side, as do the adjoining buildings. External walls of the appeal building thus do not appear to be required to separate adjoining buildings from the appeal site.
5. Additionally, the Council has confirmed that the building was not provided as part of a terrace of properties along this frontage but was added between the existing. The appellant submitted the application as relating to a detached building, and the Council have accepted this at face value. The evidence and my own observations do not lead me to a different conclusion.
6. My attention has also been drawn to Paragraph AA.1(za) of Part 20, which states that development is not permitted if the permission to use the building as a dwellinghouse has been granted only by virtue of Class MA of Part 3. The evidence indicates that prior approval pursuant to Class MA was previously granted¹ to change the first and second floors of the appeal building to 14 residential units. If this change of use has already begun, or if it were implemented before the appeal scheme, then the proposal would not benefit from the provisions of Class AA and a planning application will be required.
7. However, the Council note that there are no Building Control records for a change of use, and only one address point for the site. The Council also concluded the change of use had not taken place based on their external site visit. Likewise, I did not observe any evidence of this change of use having begun at the time of my own site visit. At this time, there is therefore no evidence to indicate that the proposals would conflict with Paragraph AA.1(za).
8. Ultimately, the development can only lawfully proceed if carried out in accordance with the conditions and limitations imposed by the GPDO. The appellant must therefore satisfy themselves that the development conforms to these limitations. If it does not, the GPDO does not grant it planning permission (irrespective of the outcome of either appeal) and the development could be at risk of enforcement action by the Council.
9. In respect of Appeal A, in the banner heading and formal decision above, I have used the postcode set out in the Council's decision notice. While this differs from that contained in the application and appeal form, it is consistent with that given for Appeal B, and that used in the appellant's other documents.
10. In respect of Appeal A, in the banner heading I have set out a truncated form of the description of development in the application form, omitting that which is unnecessary to accurately describe the scheme. For Appeal B, I have referred to the description contained in the appeal form, omitting any superfluous text, as there is no description contained within the application form.
11. Schedule 2, Part 20, Paragraph B(15) of the GPDO requires the local planning authority to assess the proposed development taking into account any representations received and having regard to the National Planning Policy Framework (the Framework) so far as relevant to the subject matter of the

¹ Council Ref DA/22/00856/PMA

- prior approval, as if the application were a planning application. My determination of this appeal has been made on the same basis.
12. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published. This has not raised any new matters which are determinative to the outcome of this appeal.
 13. Prior approval applications must not be determined, expressly or otherwise, on the basis of section 38(6) of the Planning and Compulsory Purchase Act 2004 or as though the development plan must be applied. I have had regard to the policies of the Dartford Core Strategy Adopted September 2011 (the Core Strategy), the Dartford Development Policies Plan Adopted July 2017 (the DPP) and the Dartford Local Plan to 2037 Pre-Submission (Publication) Document September 2021 (the emerging Local Plan) only in so far as they relate to the subject matter of the prior approval as material considerations. However, these policies have not been decisive in my determination of the appeal.
 14. In respect of Appeal A, the appellant provided a Noise Impact Assessment² (NIA) and Transport Statement (TS)³ with their appeal submission. In respect of Appeal B, the appellant provided a Fire Safety Statement⁴ (FSS) with their appeal submission. These documents do not materially alter their respective proposals, and the parties in the appeals have had an opportunity to comment on them through the appeal process. I am therefore satisfied that no party would be prejudiced by my consideration of them. I have thus had regard to the NIA, TS and FSS in my consideration of the appeals.
 15. In respect of Appeal A, two sets of plans have been submitted. The first depicts a single storey upwards extension to the appeal building in its existing condition. The second shows the same extension but of an external design and appearance in keeping with planning permission previously granted⁵ for renovation of the existing building, including enlargement of existing windows and changes to the external cladding. I saw on my site visit that this work has not yet taken place. However, the appellant has indicated that it is their intention to implement the second proposal, in conjunction with the consented façade improvements, and has suggested a condition to secure this. I have therefore based my assessment of the scheme on the second set of plans only.

Main Issues

16. Under Article 3(1) and Schedule 2, Part 20, Class AA of the GPDO, planning permission is granted for the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a detached building in commercial or mixed use together with certain associated works subject to limitations and conditions.
17. Paragraph AA.2(1) of Class A requires the developer to apply to the local planning authority for prior approval to assess the impact of the proposed development on (e) the external appearance of the building and (l) where the development meets the fire risk condition (defined in paragraph C(3) of Part 20), the fire safety impacts on the intended occupants of the building, among other specified matters.

² Noise Impact Assessment Report 24112.NIA.01 First Issue Date: 25/03/2022

³ Transport Statement, July 2022, 221511/TS/MN/RS/02

⁴ PB-180323. Revision 01. Fire Statement 19 - 21 Hythe Street. Issue Date 12/04/23.

⁵ Council Ref DA/22/00895/FUL

18. The Council refused both applications on grounds relating to the external appearance of the building. In respect of Appeal B, there was an additional reason for refusal pertaining to fire safety impacts.
19. The main issue in Appeal A is therefore whether prior approval should be granted, having particular regard to the effects of the proposal on i) the external appearance of the building.
20. The main issues in Appeal B are whether prior approval should be granted, having particular regard to the effects of the proposal on i) the external appearance of the building and ii) whether the development meets the fire risk condition (defined in paragraph C(3) of Part 20) and, if so, the fire safety impacts on the intended occupants of the building.

Reasons

External appearance of the building

21. The appeal site comprises a 3-storey commercial building and its curtilage located in Dartford town centre and on the edge of the Dartford Town Centre Conservation Area (CA). The wider town centre comprises a mix of buildings of various ages and size.
22. To the east of the appeal site is a large commercial building up to 4 floors in height. Further north is a large theatre building of similar height with expansive blank brick facades. There are also examples of 3 and 4 storey residential buildings at the northern end of Hythe Street. The evidence before me indicates there are large scale developments, including taller buildings and contemporary architecture, approved for sites in and around the town centre.
23. North of the appeal site, Hythe Street is predominantly lined by modest two storey terraced buildings, with a vacant plot of land in temporary use opposite. The appeal building is located midway along the street, between neighbouring buildings, and is set further back from the carriageway. This somewhat curtails its influence on longer distance views, including some from within the CA. However, it remains a relatively prominent building locally given its size and its position directly opposite the intersection with Copperfields.
24. To the south of the appeal site, the adjacent CA is predominantly characterised by a collection of older buildings of traditional scale and appearance, typically 2 to 4-storeys in height. These form terraces that frame the pedestrianised shopping streets of the town centre and contribute to its historic charm. The significance of the CA in this area, in so far as it relates to this appeal, is thus derived from its busy commercial character and the arrangement of historic buildings and thoroughfares. The appeal building sits adjacent to the CA boundary, on a main route leading into the town centre shopping streets. Its position set back from the carriageway reveals the narrowing entrance to the CA. It thus has a role in how the approach to the CA is experienced.
25. The building is of a functional design, and the evidence indicates it dates from around the 1960s. Its front elevation is heavily glazed, however at ground floor the frontage is currently blank and inactive. Side elevations of the building are also largely blank, save for a couple of windows at each level on the southern elevations. The rear elevation is primarily characterised by smaller high-level windows. The finish is a mix of light colour render and cladding, and grey brick. It appears vacant, with several broken or boarded up windows and graffiti in

- places. In its current condition, the appearance of the building does not positively contribute to the significance of the CA or its setting.
26. In both appeals, the proposed works would extend the appeal building vertically. In respect of Appeal B, the proposed extension has been designed to integrate with the consented façade improvements work. If implemented together, this would provide a cohesive external finish and fenestration design for the enlarged building.
27. Nonetheless, the two additional floors would have an appreciably lower floor to ceiling height than that of the floors below. This would be less noticeable on the front elevation, where a degree of separation would be provided between the third and fourth floors by the fourth floor set back and façade overrun. From the rear however, the proposed windows would be noticeably closer together due to the absence of any meaningful design features to distinguish the upper floors from those below. The gap between the second and third floor windows would be conspicuous in this context. As a result, the upper floors would look busier and visibly out of step with the levels below. This would give the extended building a somewhat top-heavy appearance in some views.
28. Moreover, the proposal in Appeal B would significantly expand the areas of blank wall on the sides of the building, particularly the northern elevation. This would project more than 6 metres higher than the existing and become a considerably more prominent and unduly overbearing feature in this area. This would sit in stark contrast to the modest two storey adjoining buildings and would detract from the prevailing character and appearance of the street. Accordingly, it would also harm the setting of the CA.
29. My attention has been drawn to a proposal for a two-storey upwards extension in Waltham Forest, dismissed on appeal⁶, which the appellant contends demonstrates that an increase in height to the building in isolation cannot be objected to. However, in respect of Appeal B, it is not the principal of an increase in height that is in dispute, but the design of the proposed additional levels and the associated impact on the appearance of the building and surrounding area. Notably, in the appeal example provided, the Inspector found that the proposed design, including fenestration arrangement, would adversely affect the character and appearance of the building and the area. The same can be said of the appeal proposal before me.
30. Providing additional accommodation on this site in the form of an upwards extension would reanimate the building, which would provide a degree of visual enhancement over its current unoccupied state. However, this would not outweigh the harm identified above. Moreover, given the refurbishment and change of use of the building has been pursued separately and approved, it is not inevitable, or indeed likely, that the dismissal of this appeal would result in the building remaining vacant.
31. Turning to Appeal A, the proposal in this case would constitute a more modest addition to the existing building. It has also been designed to integrate with the consented façade improvement works. The proposed plans before me show it would extend the approved façade design on all sides, ensuring consistency in the design and appearance of the building. The space between windows would also remain proportionate and consistent.

⁶ Appeal Ref: APP/U5930/W/21/3279947

32. The Appeal A proposal would result in a building higher than neighbouring buildings and would also extend areas of blank façade. However, the building is already taller than its immediate neighbours, and the proposal would not represent a significant increase in height. The proposal would extend a building that is of a design and form that differs to many of the traditional buildings in the vicinity. Nevertheless, in the wider context described above, the scale and contemporary design of the building would not appear unduly out of keeping.
33. The proposal would therefore not result in harm to the setting of the CA and thus would preserve its significance. Additionally, and for the reasons set out above, I do not agree that the proposal would harm the appearance, perceptions, character, vitality or attraction of the town centre. It therefore would not conflict with or undermine its wider revitalisation and regeneration.
34. The Council has drawn my attention to other proposals for two-storey upwards extensions in Beaconsfield⁷ and Barnet⁸, both dismissed on appeal. The judgement in Cab Housing Limited & others⁹, referenced in the Beaconsfield case is relevant, and I have had regard to its findings in my decision. However, the full details of each of these cases are otherwise not before me, and I therefore cannot draw any meaningful comparisons to the appeal proposal. Ultimately, each case must be considered on its individual merits, and they do not lead me to a different conclusion in respect of this main issue.
35. In respect of Appeal A, I therefore find that the proposal would not have an unduly harmful effect on the external appearance of the building. It would thus not conflict with Policy CS2 of the Core Strategy or Policy DP2 of the DPP. These policies, among other provisions, seek to encourage good design, and ensure development responds to, reinforces and enhances positive aspects of the locality. They also seek to protect and enhance the town centre's historic environment, including by requiring development adjacent to the CA to respect the varied historic, heritage and archaeological context.
36. The proposal would also be consistent with Policies D1, D2 and M1 of the emerging Local Plan. These policies, among other provisions, seek to ensure development proposals respond positively to local character and history, ensure appropriate regard is had to heritage assets, and that development is suitable in terms of height, mass, form and scale.
37. I have not identified any conflict with the Dartford Town Centre Framework Supplementary Planning Document (SPD), which sets out the Council's aims for the revitalisation, regeneration and transformation of the town centre, including through seeking high quality design.
38. The proposal would also comply with Chapter 12 of the Framework, in respect of its aims of achieving well-designed and beautiful places. In particular, the proposal would accord with paragraph 135 which, among other provisions, seeks to ensure proposals add to the overall quality of the area, are visually attractive and sympathetic to local character and history. I have not identified any conflict with paragraph 139, which indicates that development that is not well design should be refused.

⁷ Appeal Ref: APP/N0410/W/21/3287827

⁸ Appeal Ref: APP/N0410/W/21/3287827

⁹ Cab Housing Limited & others v SSLUHC and others [2022] EWHC 208 (Admin)

39. In respect of Appeal B, I find that the proposal would unduly harm the external appearance of the building. It would therefore be contrary to Policy CS2 of the Core Strategy, Policy DP2 of the DPP, Policies D1, D2, and M1 of the emerging Local Plan, the SPD and paragraphs 135 and 139 of the Framework.
40. Paragraph 123 of the Framework stipulates that decisions should promote an effective use of land for new homes; however, this must be considered alongside safeguarding and improving the environment. Paragraph 124 of the Framework indicates that upward extensions should be allowed where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene and is well designed. Given my findings in respect of Appeal B, it has not been demonstrated that the proposal would be compliant with these paragraphs.
41. Chapter 7 of the Framework seeks to ensure the vitality of town centres, including by requiring decisions to take a positive approach to their growth, management, and adaptation. I have not identified any conflict with this part of the Framework in respect of either appeal.

Fire safety impacts

42. Paragraph C(3) of Schedule 2, Part 20 of the GPDO states that development meets the fire risk condition if the development relates to a building which will contain two or more dwellinghouses; and satisfy the height condition in paragraph (3), read with paragraph (7), of article 9A (fire statements) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO).
43. Paragraph (3) of article 9A of the DMPO states that the height condition is that the building is 18 metres or more in height; or the building contains 7 or more storeys. Paragraph 7 states that, for the purpose of paragraph (3), the height of a building is to be measured from ground level to the top floor surface of the top storey of the building (ignoring any storey which is a roof-top machinery or plant area or consists exclusively of machinery or plant rooms).
44. Based on the plans before me, the height of the proposed extended building in Appeal B, measured from ground level to the floor level of the top (fourth) floor and ignoring the roof-top area, would be less than 18 metres in height. This has been confirmed in representations from the Health & Safety Executive.
45. Accordingly, in respect of Appeal B, the proposal would not meet the fire risk condition. Paragraph AA.2(1)(I) of Part 3 Class AA of the GPDO is therefore not applicable in this instance. There is thus no requirement to assess the fire safety impacts on the intended occupants of the building.

Other Matters

46. In respect of Appeal A, the Council contend that the proposal would conflict with various parts of the Framework, including the overarching objectives of sustainable development. It is alleged that the building is at the end of its life, and the proposal would not make effective use of land through positive use of the rear curtilage and would diminish potential for more positive development.
47. In respect of Appeal B, reference has been made to various social, economic and environmental benefits, including the contribution to the local housing supply, additional spend in the local economy and the reuse of existing

resources. The appellant also highlights support provided by the Framework for upwards extensions and use of brownfield land, under-utilised buildings, and small and medium sized sites, as a means of delivering additional homes.

48. In both cases however, the principle of the development is already accepted through the GPDO. Regard must be had to paragraphs of the Framework only in so far as they are relevant to the subject matter of the prior approval.
49. In respect of Appeal A, there is no compelling evidence before me to indicate that the appearance of the proposal would be detrimental to the vitality of the town centre or would undermine investor growth or other planned improvements, particularly given my findings above.
50. In respect of Appeal A, representations have been received concerning building regulations, Housing Act requirements and responsibilities for private landlords. These matters are not relevant to the subject matter of the prior approval and the development would remain bound by any other regulatory requirements.

Conditions

51. Any development under Class AA is permitted subject to the condition that it 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 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.
52. The developer must also notify the local planning authority of the completion of the development as soon as reasonably practicable after completion. Following the development, every dwellinghouse in the building must 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.
53. It is not necessary to repeat the conditions as set out above in this decision. However, Paragraph B(18) of Part 20 allows additional conditions reasonably related to the subject matter of the prior approval to be imposed.
54. In respect of Appeal A, the Council has suggested several additional conditions should the appeal be successful. I have considered the suggested conditions and amended where necessary to accord with the Planning Practice Guidance (PPG) and the tests for conditions set out in Paragraph 56 of the Framework.
55. A condition is required to specify the approved plans as this provides certainty, particularly as two sets of plans were submitted with the application. A condition is also required to ensure the mitigation measures identified in the NIA are provided in the interests of addressing impacts of noise from any commercial premises on the intended occupiers of the new dwellinghouses.
56. A condition is necessary to secure details of the proposed car parking and a management plan for its operation, ongoing maintenance, and preclusion of development in this area, in the interests of ensuring the transport and highways impacts of the development are acceptable. The appellant contends it is not reasonable or necessary to preclude further development here as car use will likely decline and the land could be repurposed in future. However, should

- circumstances change, the removal or variation of the condition could be sought, with appropriate justification, through a further planning application.
57. Details of refuse and cycle storage are also required to be secured by condition for transport and highways reasons.
58. The appeal site is in Flood Zone 2. A condition is required to secure details of flood mitigation measures, in the interests of addressing flooding risks in relation to the building.
59. The appellant has indicated they would accept a planning condition to ensure the approved façade improvements to the rest of the building are carried out in conjunction with the upward extension. I consider this to be necessary in this instance to ensure the building maintains consistency in its overall appearance.
60. The Council has suggested a condition requiring obscure glazing and restricted opening of south facing windows, to safeguard neighbouring amenity. There would be 2 windows proposed on the southern elevations of the third floor. One would be located close to the southern boundary and would sit at a high level, above the roof of the adjacent building. Any overlooking between this window and those in the northern elevation of the adjacent building would be oblique. The other would be set back a significant distance from the southern boundary, overlooking the appeal site. There would thus be no appreciable harm to the amenity of the neighbouring premises and so this condition is not necessary.
61. The Council has also suggested a condition requiring amended plans be provided omitting the change of use of the existing building, which does not form part of this development. However, planning permission is only granted in the terms set out in the GPDO. Class AA does not permit change of use of the lower floors of the building, and so this cannot be permitted by virtue of this decision, irrespective of what is shown on the submitted plans.
62. The Local Highway Authority has suggested a condition to secure a travel plan, to reduce dependency on the private car. However, while transport and highways impacts are a prior approval matter in this case, regard should be had to the direct transport and highways impact of the development only, and not wider matters such as whether the location is accessible. There is insufficient justification before me to indicate why a travel plan is necessary or relevant in this instance. Notably, the Council also did not include this in their list of suggested conditions.

Conclusion

63. In respect of Appeal A, I conclude that the appeal is allowed and prior approval is granted.
64. In respect of Appeal B, the appeal is dismissed.

Ryan Cowley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans (insofar as they relate to development permitted by Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)):

3482/L/01 – LOCATION PLAN

3482/P/101 – PROPOSED GROUND FLOOR PLAN

3482/P/102 – PROPOSED FIRST FLOOR PLAN

3482/P/103 – PROPOSED SECOND FLOOR PLAN

3482/P/104 – PROPOSED THIRD FLOOR PLAN

3482/P/105 – PROPOSED ROOF PLAN

3482/P/106 – PROPOSED WEST AND EAST ELEVATIONS

3482/P/107 – PROPOSED NORTH AND SOUTH ELEVATIONS

3482/P/108 – PROPOSED A-A AND B-B SECTIONS

3482/P/109 – PROPOSED C-C SECTION

- 2) Prior to occupation the sound insulation and glazing mitigation measures identified in the Noise Impact Assessment by KP Acoustics Ltd (Report 24112.NIA.01 25.03.22) shall be provided and a verification report shall be submitted to and approved in writing by the Local Planning Authority to evidence that the standards meet BS:8233:2014 and WHO Community Noise guidelines. The development shall be maintained in accordance with the approved details.
- 3) Prior to occupation of the development hereby approved details of the car park (including layout, turning and loading area) and a management plan for its operation shall be submitted to and approved in writing by the Local Planning Authority. The car park and spaces shall be maintained and kept available for such use at all times and no development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or not, shall be carried out on that area of land or to preclude vehicular access thereto. The development shall adhere to the approved car park management plan.
- 4) Prior to occupation details of refuse and cycle storage shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed and maintained in accordance with the approved details.
- 5) Prior to occupation details of flood mitigation measures shall be submitted to and approved in writing by the Local Planning Authority. The measures shall be provided prior to occupation and maintained thereafter.
- 6) The residential flats authorised by this Prior Approval shall not be occupied until all the works shown on the drawings approved pursuant to the planning permission ref 22/00895/FUL dated 23.12.2022 have been completed.