



Appeal Decision

Site visit made on 24 October 2023

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2024

Appeal Ref: APP/L5240/W/23/3320948

21 Tavistock Road, Croydon CR0 2AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Mr Savvas Savva Savgold Ltd against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 22/04661/GPDO.
 - The development proposed is described as 'prior approval application seeking to add two additional storeys to create eight additional flats - more detail within planning statement.'
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant against the Council of the London Borough of Croydon. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
4. In the period since the appeal was submitted, the Government published a revised version of the National Planning Policy Framework (the Framework). The main parties were given the opportunity to comment on any implications for the appeal of this change, and I am satisfied that no prejudice would be caused by my consideration of the appeal in light of the revised Framework.

Background and Main Issues

5. The appeal is made pursuant to Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Class A 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.

6. This right is subject to limitations which are specified at paragraph A.1, and conditions which are set out at paragraph A.2. The 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 prior approval matters.
7. The prior approval process does not require that a proposed development be assessed against the development plan. I have therefore had regard to the policies only so far as they are relevant to the prior approval.
8. In refusing the application, the Council states that the proposed development would not have an acceptable external appearance and there would not be a planning obligation to secure the units as car free, resulting in an unacceptable impact on transport and highways. Therefore, they concluded that the proposed development would not comply with Conditions A.2.1 (a) and A.2.1(e) of Part 20, Class A of the GPDO.
9. The main issues are therefore whether or not prior approval should be granted having regard to (i) the external appearance of the building and (ii) transport and highways impacts of the development.

Reasons

External appearance

10. The appeal site includes a four storey residential building with a flat roof, above which the appeal proposes two additional storeys to accommodate eight homes. Located on the western side of Tavistock Road, it is closely positioned between the four storey Tavistock Court and three storey Westburn Court. Whilst significantly taller buildings are seen in the surrounding context, there is greater uniformity of buildings which are of a lower height on the western side of Tavistock Road, which sited behind street trees forms a positive characteristic within the urban area.
11. However, taking into account a recent High Court judgment,¹ where prior approval is required in relation to the effect of development on the external appearance of a building, it will be a matter of planning judgement as to whether consideration is given to the effect in terms of the building's intrinsic design and to the effect in terms of the building's relationship with nearby properties and the area. In the case of the appeal, the building's height and visibility in Tavistock Road, the surrounding area and against adjacent dwellings is an aspect of its external appearance.
12. The existing fourth storey is partially inset, and the proposed floors would be constructed in line with this floor beneath. The fourth floor would be constructed in brick to match the host building. The fifth floor would feature contrasting cladding and be set under a flat roof. The external treatment consisting of the materials, glazing, balconies and cladding would be consistent with the host building. However, due to the set back of the fourth floor, the arrangement of the upper floors above would unduly exacerbate this stepped feature, which is not consistent with the more uniformly shaped front elevations of nearby buildings. The proposed development would fundamentally alter the architectural composition and external appearance of the building relative to its surroundings.

¹ CAB Housing Ltd v SSLUHC [2022] EWHC208 (Admin)

13. The existing building sits slightly above the height of the Mansard roof at Tavistock Court. However the existing upper floor of the appeal building is almost entirely above the height of the shallow pitched roof at the considerably more diminutive Westburn Court to the other side. The proposed additional storeys would result in an even more pronounced height difference between both properties, but particularly Westburn Court.
14. The street scene along this part of Tavistock Road is mixed, with buildings of varied form and architectural appearance, some are up to 7 storey height, and some beyond Tavistock Road are of significant height. However, the taller buildings on Tavistock Road tend to be sited next to similarly scaled buildings or have a greater degree of spacing around them, or greater provision of more mature landscaped grounds which the appeal site lacks. Buildings in this part of Tavistock Road tend to be four storeys. Although the taller buildings are visible, they are located some distance from the appeal site, such that they cannot be comparable in the nearer and direct views from the street.
15. The development would span the whole width of the appeal building, close to its neighbours. Based on my observations at my visit, it would be appreciable from the gaps between buildings on St James Road and Newgate both close to the site. Although street trees would provide some visual mitigation on the approaches to the site along Tavistock Road there would be less for direct views of the site, or when viewed next to the lower Westburn Court.
16. However in the aforementioned views, I consider that the immediate juxtaposition of the development standing nearly two and three full storeys above its neighbours and other buildings on the western side of Tavistock Road, would result in an awkward and visually jarring transition that would be striking, causing the development to appear unduly prominent in this part of the street scene. At the height proposed the cladding, whilst not appearing bulky, would not prevent the development appearing unusually high in its setting and against the adjacent buildings. Notwithstanding the wider variety in the area, the development would be a conspicuous and incongruous addition that would dominate the street scene here.
17. I therefore conclude that the external appearance of the building would fail to assimilate sympathetically with the host building and its surroundings. It would therefore fail to comply with Condition A.2.1 (e) of Schedule 2, Part 20, Class A of the GPDO.
18. I acknowledge that the scheme has been amended following the refusal of an earlier application particular with respect to cladding, cycle parking and natural light. The GPDO requires that for prior approval proposals under Part 20 regard be had to the National Planning Policy Framework so far as relevant to the subject matter of the prior approval. The proposed development would deliver new dwellings, which are needed in the area. It would support the Government's objective of boosting the supply of homes. The proposal is to extend an existing building, therefore making use of a brownfield site. The building is in an accessible location with excellent transport links, and there would be some economic benefits from the construction and occupation of the development. However, in this instance the increase in height of 21 Tavistock Road and resulting effect on the external appearance of the host building, including the character and appearance of the area, would be such that it would outweigh these considerations.

19. Insofar as they are material, the proposal would conflict with Croydon Local Plan adopted 2018 (the Local Plan) Policy SP4 which requires that development respects and enhances Croydon's varied local character. The proposal would also conflict with Local Plan Policy DM10 and Policies D3 and D4 of the London Plan adopted March 2021 (the London Plan). Collectively these policies seek to ensure that development which increases residential densities should also respect existing local character, including existing development patterns, scale, height and massing.

Transport and highway impacts

20. The site is within an area of good accessibility with a Public Transport Accessibility Level (PTAL) of 6 which is classified as excellent. The Council advises that a car free agreement is necessary in order to mitigate the highways related impacts which would otherwise arise from increased car use such as traffic, pollution and parking stress and to promote other modes of sustainable transport. I have no substantive evidence before me to disagree.
21. The appellant has submitted a Unilateral Undertaking (UU) which aims to deliver a car free development to ensure that anyone living there, other than for example a Blue Badge holder, would not be eligible to apply for a residents parking permit, alongside the provision of a Traffic Management Order fee, and the Council's associated legal costs.
22. I have considered the UU in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy Regulations 2010 (the CIL regulations). This specifies that a planning obligation may only constitute a reason for permitting the development if it is necessary, directly related and fairly and reasonably related in scale and kind, although this does not necessarily apply to prior approval determinations. However, a planning obligation may be submitted in mitigation of the matters that are the subject of the prior approval.
23. I consider that the measures in respect of restricting future occupier permits are necessary, related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of CIL regulations.
24. However I am not aware what the justification for the Traffic Management Order fee is. Nor is it clear why the amount has not been specified in the UU. I am therefore unable to conclude with any confidence that this has been proven to be either directly related to the proposed development or necessary to make the development acceptable in planning terms.
25. Alongside the above and uncertainty regarding the imprecise amount to be paid I have some concerns about the document itself. It is not clear whether the Council could rely on it to secure the car free development or contributions if they are required. For example, the "Application" and "Planning Permission" remains blank and the planning application is not referenced in the document. The "Land" and "Site Plan" at Appendix 1 is not clearly identifiable in the version before me. The "Traffic Management Order Fee" is not specified and Appendix 3 in relation to this has not been provided.
26. As I have dismissed the appeal for other reasons, I have not pursued this matter further with the main parties. Although, it is not incumbent upon me to do so, had I found the proposal acceptable in respect of external appearance I

would have sought clarification from the main parties in respect of these matters relating to the uncertainty of the UU.

27. Although I do not doubt that that a car free development could be secured and that the appellant is willing to undertake this, I must conclude that the proposed development would not accord with Condition A.2.1(a) of Schedule 2, Part 20, Class A of the GPDO as it has not been sufficiently evidenced that the highway and transport impacts of the proposed development would be acceptable. Even if the submitted UU is legally sound, and this matter was addressed, it would not outweigh the harm in relation to the above matter of external appearance to justify the proposed development and would not alter the decision.
28. To the extent that they are material to the prior approval matter, the proposal would not be in accordance with the requirements of Policy T6 of the London Plan and Policies SP8 and DM30 of the Local Plan. Together, these seek, amongst other matters, to ensure car parking should be restricted in line with levels of existing public transport accessibility and connectivity.

Other Matters

29. It is not disputed by the parties that the proposed development would not result in harm to the living conditions of neighbouring occupiers once occupied or during construction. I see no reason to disagree with these conclusions. However these are neutral matters which weigh neither for nor against the development. In conclusion the totality of the benefits do not outweigh the harm arising in respect of the external appearance of the building.

Conclusion

30. I have concluded that the proposed development would fail to comply with Conditions A.2.1(a) and A.2.1(e) of Schedule 2, Part 20 Class A of the GPDO.
31. For the above reasons, and taking account of all other matters raised, I conclude that the appeal is dismissed.

K Williams

INSPECTOR