



Appeal Decision

Site visit made on 12 June 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2024

Appeal Ref: APP/N5090/W/23/3334224

Colman Court, Christchurch Avenue, North Finchley, Barnet, London N12 0DT

- 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 Greyclide Investments Limited against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 23/3028/PNV.
 - The development proposed is the construction of one additional storey to provide 9 x residential units (class C3).
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Decision

1. The appeal is allowed and planning permission is granted for the construction of one additional storey to provide 9 x residential units (class C3) at Colman Court, Christchurch Avenue, North Finchley, Barnet, London N12 0DT in accordance with the terms of the application, Ref 23/3028/PNV, subject to the conditions in the attached schedule at the end of this decision.

Applications for costs

2. An application for an award of costs has been made by Greyclide Investments Limited against the Council of the London Borough of Barnet. This is the subject of a separate decision.

Preliminary Matters

3. 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 (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 block of flats, as well as certain associated works.
4. Reason for refusal no. 2 refers to the ceiling height of the additional storey of accommodation not complying with criteria A.1(e) (ii) of Class A, Part 20, Schedule 2 of the GPDO as it was shown to measure 2.5 metres, which was greater than the ceiling height of the existing flats below. The appellant has submitted a revised sectional drawing with their appeal that shows the additional storey of accommodation would have a ceiling height of 2.4 metres, the same as the existing flats below it. In view of this the Council has confirmed that the proposal would meet criteria A.1 (e) (ii) of Class A, Part 20, Sch. 2 of the GPDO and on that basis it has withdrawn reason for refusal no. 2.

The Council and other interested parties have had the opportunity to comment on that information, and I am satisfied there would be no unfairness to any interested party by accepting what is a relatively minor change to the proposal. Consequently, the appeal has been determined on this basis and reason for refusal no. 2 is no longer relevant.

5. Paragraph A.1. of Class A, Part 20, Sch. 2 of the GPDO sets out limitations to this permitted development, and Paragraph A.2. requires that before beginning the development, the developer must apply to the Council for prior approval in relation to certain matters. The Council considered that the proposal meets the requirements of paragraph A.2 of Class A, except for paragraph A.2.(1)(e), relating to external appearance. Based on the evidence before me, I am also satisfied that the proposal would not result in adverse impacts in respect of the other prior approval matters set out in paragraph A.2, and taking into account the above change, I am also content that the proposal would not fall outside any of the limitations and restrictions set out in paragraphs A.1.(a) to (o). I have therefore confined my reasoning to the prior approval matter of external appearance.
6. Paragraph B (15) of Class A, Part 20, Sch. 2 of the GPDO requires that when determining an application under Class A, regard should be had to the National Planning Policy Framework (the Framework) as far as relevant to the subject matter of the prior approval. It was also held in *CAB Housing Ltd v SSLUHC & Broxbourne BC* (2023) that external appearance is not limited to the effect on the dwellinghouse and can include the effect on adjoining and nearby properties. The appeal proposal has been determined on this basis.
7. Following the Council's notice of decision, the National Planning Policy Framework (the Framework) was revised on 19 December 2023. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context, and both parties have had the opportunity to make comments on the revised Framework within their statements and final comments.
8. 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. As such, I have only had regard to the parts of the development plan referred to by the main parties, insofar as they are material considerations to the matters of external appearance.

Main Issue

9. Accordingly, the main issue is whether prior approval should be granted having regard to the effect of the proposals on the external appearance of the buildings and the area.

Reasons

10. Colman Court includes two buildings containing flats, that are a mixture of 3 and 4 storeys high with varying parapet roof heights, hiding their flat roofs, along with projecting parts on the frontage of the buildings, these aspects add interest and help to break up the scale of the buildings. The appeal site occupies a corner location facing onto both Christchurch Avenue and High

Road, it has a small setback from Christchurch Avenue but a much greater setback from High Road, there is also planting between the buildings and both carriageways. The existing buildings are clad in grey brick punctuated by openings with a vertical emphasis which include white coloured spandrel panels and white window frames. I have been made aware that planning permission has been granted to re-clad the building in buff brick.¹

11. There are a range of uses in the immediate area, with residential uses being predominant, particularly along Christchurch Avenue. High Road is a busy thoroughfare and has a variety of different building types and heights. Although Christchurch Avenue consists of mainly two and three storey buildings, the appeal site is already very different due to its parapet roof design, its much larger span, and corner position providing a larger frontage presence. In view of this, and taking into account the existing raised parts of the buildings, there would be scope for a modest increase in the height of the buildings to provide an additional storey of accommodation, whilst ensuring they remain mid-rise flatted buildings, and without unacceptably disrupting the relationship of the appeal site to the character and scale of properties nearby.
12. Whilst this would mean the buildings in question would be higher than other buildings on Christchurch Avenue, for the reasons outlined above, including the much larger size of the appeal site, they would not appear overly dominant or out of character with the suburban character of the locality. Moreover, the appeal site is partly screened by the trees in front of it, along Christchurch Avenue and by some on High Road, which I saw on my site inspection would restrict many views of it in the context of the lower height properties along neighbouring roads.
13. The proposed additional storey of accommodation would ensure the same variation in the parapet roof height and projecting parts of the buildings are maintained and that the existing vertical emphasis of the window designs and spandrel panels on the building is respected. Together this would ensure the proposals would not be seen as top-heavy additions to the buildings and ensure a satisfactory relationship to the external appearance of the buildings, that was not harmful to the character and appearance of the area.
14. Whilst I note the proposed buff brick finish would be different to the existing grey brick, the appellant has indicated that a condition could be imposed to ensure the brick finish on this proposal matched that of the materials approved on the extant planning permission.² The Council has questioned whether this is possible, however paragraph B (18) of Class A, Part 20, Sch. 2 of the GPDO is clear that conditions can be imposed relating to such matters of external appearance. A condition in this respect would ensure the proposal as extended would have the same brick cladding as approved to the existing buildings, and enhance the overall appearance of the buildings at the appeal site.
15. I have been referred to an earlier appeal decision³ relating to one of the buildings at the appeal site, that sought approval for an additional two-storeys of accommodation above it, which was dismissed. I note in that case the Inspector concluded that the proposal was harmful to the external appearance of the building and the area, as its design was not truly different, nor did it

¹ Ref. 21/3715/FUL

² Ref. 21/3715/FUL

³ Ref: APP/N5090/W/21/3279091

mimic the appearance of the building. This proposal is distinctly different as it relates to one additional storey above both buildings, in a design that would relate to the character and appearance of the buildings. As such that earlier appeal decision has not led me to conclude differently regarding my findings above.

16. I have also been referred to an appeal decision on a site nearby at 679 High Road⁴, that was dismissed. That related to a much different proposal including six buildings to provide 250 residential units of between four and seven storeys high, unlike this prior approval scheme for an upward extension above existing buildings. Nevertheless, I acknowledge the description of the character of the surrounding area in that appeal decision refers to the appeal site as being a mid-rise flatted development with many of the nearby buildings being lower in height. In this case, after taking into account the earlier appeal decision, I have found the proposal would ensure the mid-rise scale of the buildings at the appeal site would be maintained and the proposal would not contribute harmfully to the external appearance of the buildings and the area.
17. To conclude on this main issue, the proposal would have an acceptable effect upon the external appearance of the building and the area and comply with paragraph A.2.(1)(e) of Class A, Part 20, Sch. 2 of the GPDO. In addition, the proposal would accord with paragraphs 124 and 135 of the Framework, that amongst other things, require development to function well and add to the overall quality of the area, be sympathetic to local character, and ensure that development respects the prevailing height and form of neighbouring properties and the overall streetscene.
18. Although not determinative, the proposal would also comply with Policy D3 of The London Plan, The Spatial Development Strategy for Greater London, dated March 2021 (LP), Policy CS5 of Barnet's Local Plan (Core Strategy), Development Plan Document dated September 2012 and Policy DM01 of Barnet's Local Plan (Development Management Policies) Development Plan Document dated September 2012 (DMP) that amongst other things, collectively require high quality development that responds positively to local character, particularly in terms of its scale, mass and height.
19. In addition, the proposal is also consistent with one of the key principles of Barnet's Residential Design Guide, Supplementary Planning Document, dated October 2016, that seeks to ensure the scale of new development relates to its setting and local character.
20. The Council referred to the proposal conflicting with Policy HC1 of the LP and Policy DM06 of the DMP. These policies are concerned with heritage assets, I did not find them to be directly relevant to this prior approval scheme.

Other Matters

21. An interested party has referred to the effect of the proposal upon the setting of Christ Church, a grade 2 listed building located on the opposite side of High Road, near to the appeal site. I note Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990, requires that when considering proposals for development which would affect the setting of a listed building, I am required to have special regard to the desirability of preserving that setting,

⁴ Ref: APP/N5090/W/22/3304952

and paragraph 205 of the Framework also requires me to give great weight to the conservation of the setting of listed buildings. Christ Church has a generous setback from High Road, with planting in front of it, it has a gable facing the road with a large rose window, and is visible from parts of High Road, and from parts of this end of Christchurch Avenue. The generous separation distance between Christ Church and the appeal site, as well as the mature planting in-between them, their inter-visibility, and given the relatively modest increase in the overall height of the buildings, I am content there would be no harm to the setting of Christ Church from the proposal. It is also noteworthy that the Council did not find any harm in this respect.

22. There has also been a number of objections raised by interested parties relating to; the principle of the proposal; suggested overcrowding of the current flats; the existing management of the building and health and safety concerns; the effects of the proposal upon the living conditions of existing occupiers from noise, privacy, overshadowing and loss of sunlight; car parking and highway safety effects; refuse storage including potential odour; whether sufficient information has been submitted; and that there has been no consultation with residents from the developers. In terms of the principle of the proposal this is already established by the GPDO, regard can only be had to the Framework insofar as relevant to the prior approval matters, as appropriate.
23. I am content that there has been sufficient information provided for the merits of the prior approval proposal to be properly considered. Comments raised regarding the existing situation at the flats are noted but they go beyond the planning merits of the prior approval application before me. Conditions (see below) can be imposed to address refuse storage provision from this proposal, and a standard condition is imposed by the GPDO to control construction effects upon living conditions, including noise.
24. As the proposed flats would be directly above existing flats, in a similar format to the existing situation, I am content that there would be no unacceptable privacy or overshadowing effects to existing windows. The separation distances to other neighbouring properties would also mitigate any unacceptable effects upon living conditions of neighbouring occupiers. This view is also supported by the submitted Daylight and Sun Light Assessment, dated July 2023, by Herington Consulting Limited. As such, I see no reason to disagree with the Council in that there would be no unacceptable effects upon the amenity of the existing building and neighbouring premises.
25. The appeal site is within a Controlled Parking Zone (CPZ) and has a PTAL rating of 3. The Council has stated that there is no requirement for dedicated off-street parking in this case following a parking stress survey identifying 72 free spaces near to the appeal site, meaning it would not be reasonable to insist on a car-free development restriction. Nor have the Council raised any objections in terms of the effects of the proposal upon highway safety, and I find no reason to disagree.

Conditions

26. Any development under Class A is permitted subject to the conditions set out in Paragraph A2 of Part 20 Sch. 2 of the GPDO, which state; that the development must be completed within a period of 3 years starting with the date prior approval is granted; and that 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; that the developer must also notify the local planning authority of the completion of the development as soon as reasonably practicable after completion; and that 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.

27. It is not necessary to repeat the conditions as set out above in the attached schedule to 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.
28. A condition is required to specify the approved plans to provide certainty as to the approved development.
29. A condition requiring approval of the precise materials to be used on the exterior of the building is necessary to ensure a satisfactory external appearance that harmonises with the building (as re-clad) and the area. The appellant has indicated they would accept a planning condition to ensure the approved re-cladding to the rest of the building is carried out in conjunction with the upward extension. I consider such a condition to be necessary in this instance to ensure the building maintains consistency in its overall appearance.
30. It is also necessary to condition details of refuse storage and collection in the interests of the amenity of existing and proposed occupiers, and for external appearance reasons. In addition, a condition regarding cycle storage provision is necessary for transport and highways reasons.
31. It was not necessary to impose the Council's recommended Construction Logistics and Demolition plan condition, as this is mainly covered by the standard conditions set out within paragraph A2 of Class A Part 20, Sch. 2 of the GPDO. Given that no evidence of asbestos within the building has been provided, it is not reasonable to impose a condition in this respect.

Conclusion

32. For the reasons given above, I conclude that the appeal is allowed and prior approval is granted subject to conditions.

A Hunter

INSPECTOR

Schedule of Conditions

- 1) The development hereby approved shall be carried out in accordance with the following approved plans: drawing no's 19165-LSI-CC-00-DR-A-1505 - REV PO1; 19165-LSI-CC-00-DR-A-1501 - REV P02; 19165-LSI-CC-00-DR-A-1511 - REV P02; 19165-LSI-CC-03-DR-A-1512 - REV PO9; 19165-LSI-CC-04-DR-A-1514 - REV PO6; 19165-LSI-CC-ZZ-DR-A-1525 - REV P07; 19165-LSI-CC-ZZ-DR-A-1526 - REV PO6; 19165-LSI-CC-ZZ-DR-A-1527 - REV PO6; 19165-LSI-CC-ZZ-DR-A-1540 - REV PO3; 19165-LSI-CC-ZZ-DR-A-1541 - REV PO3; 19165-LSI-CC-ZZ-DR-A-1542 - REV PO3; 19165-LSI-CC-ZZ-DR-A-1543 - REV PO3; 19165-LSI-CC-ZZ-DR-A-1544 - REV PO4; and 19165-LSI-CC-ZZ-DR-A-1272 - REV PO3.
- 2) No construction of any additional storey of accommodation shall take place until details of the materials to be used on the external surfaces of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the approved materials.
- 3) Prior to first occupation of the flats hereby approved, precise details of refuse storage facilities including any screening structures, together with their collection points and a timetable for their implementation, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details and timetable, and maintained as such thereafter.
- 4) Prior to first occupation of the flats hereby approved, precise details of cycle storage provision, including any associated structures and a timetable for their implementation, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details and timetable, and maintained as such thereafter.
- 5) The residential flats authorised by this Prior Approval, shall not be occupied until all the external cladding works pursuant to the planning permission ref. 21/3715/FUL, dated 28 October 2021, have been completed in respect of the building in which they are situated.