



Appeal Decision

Site visit made on 1 October 2024

by A Caines BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 October 2024

Appeal Ref: APP/N1540/W/23/3333126

37 Broad Walk, Harlow, Essex CM20 1JA

- 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 AB of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by NewCity Property Partners against the decision of Harlow District Council.
 - The application Ref is HW/PANDC/23/00207.
 - The development proposed is the erection of two-storey rooftop extension to provide 17 residential units above the existing Class E commercial floorspace, including associated structural works.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would be permitted development under Schedule 2, Part 20, Class AB of the GPDO.

Reasons

3. Article 3(1) and Schedule 2, Part 20, Class AB(1)(a) of the GPDO permits the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a terrace building in commercial or mixed use, together with any associated development listed under sub-paragraph (3), subject to meeting various limitations and conditions.
4. Of particular relevance to this appeal is sub-paragraph (3)(c) which involves the construction of appropriate and safe access to and egress from the new dwellinghouses and existing premises, including means of escape from fire via additional doors or external staircases. Paragraph AB.1(n) states that development under sub-paragraph (3)(c) is not permitted if it would extend beyond the curtilage of the existing building.
5. The proposal includes two external staircase structures. One of these would physically adjoin 37 Broad Walk on its Terminus Street elevation and would serve as the principal point of access/egress to the flats. The other staircase is for fire escape purposes and would adjoin 39 Broad Walk on Crown Gate.
6. It is not in dispute that the Crown Gate staircase would be contained within the application site boundary. However, this staircase would not be physically attached to the proposed flats, and so, could only be reached by travelling across the roof of 39 Broad Walk, which lies beyond the application site boundary. While the appellant claims that this route does not form part of the

proposal, the staircase could not perform its intended function as a fire escape without it. I therefore consider that the rooftop escape route should be considered part and parcel of the Crown Gate staircase in order for these works to come under the provisions of sub-paragraph (3)(c).

7. Furthermore, it is not disputed that safety barriers would be necessary along the escape route to prevent users falling off the edge of the roof. Indeed, the submitted drawings indicate it would be demarcated by new railings. The appellant suggests that this demarcation could still be achieved without carrying out any physical development by utilising free-standing edge protection barriers.
8. While it would appear that such safety barriers can be secured in place by weighted pads, the precise detail of this is unclear. Things held under their own weight can sometimes be held to be fixed in the sense that they aren't easy to move. It is reasonable to presume that there must be a decent amount of weight in the pads or some other means of keeping them in place if the barriers are to be sturdy enough to stop someone falling off the edge of the roof, and to ensure that they cannot be easily moved or removed. Moreover, the barriers would be reasonably substantial, given that they would stretch across the roof, and intended to be permanent because they would be needed for the lifetime of the development. They would be visible from outside the site and result in a permanent physical change to the site. On this basis, it is difficult to see how the barriers would not amount to development. The appellant has not submitted sufficient information for me to be convinced otherwise. It follows that works for appropriate and safe access for the development would not be wholly contained within the site, contrary to paragraph AB.1(n).
9. The appellant states that the Crown Gate staircase was provided voluntarily and could have been omitted from the scheme. Even so, it forms part of the proposal which is now before me. In addition, while a right of access may already exist across the roof, it has not been demonstrated that this would be appropriate and safe without further safety works.
10. I therefore find that the proposal as a whole cannot be permitted development under Schedule 2, Part 20, Class AB of the GPDO.

Other Matters

11. The provisions of paragraph AB.2 of the GPDO require the local planning authority to assess the proposed development based on several different matters. However, this is only necessary where development is permitted. This is not the case here. It is therefore unnecessary for me to go on to consider the merits of the proposal based on these matters.

Conclusion

12. For the reasons given above, the appeal should be dismissed.

A Caines

INSPECTOR