

Appeal Decision

Site visit made on 4 September 2024

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th October 2024

Appeal Ref: APP/A1910/W/23/3334029

1-31 Nightingale Walk, Hemel Hempstead, Hertfordshire HP2 7QX

- 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 Abbeytown Ltd against the decision of Dacorum Borough Council.
- The application Ref is 23/00423/DPA.
- The development proposed is construction of one additional storey of new dwellinghouses above 1-12 and 26-31 Nightingale Walk to provide 6 new residential units (Class C3).

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for construction of one additional storey of new dwellinghouses above 1-12 and 26-31 Nightingale Walk to provide 6 new residential units (Class C3) at 1-31 Nightingale Walk, Hemel Hempstead, Hertfordshire HP2 7QX in accordance with the application 23/00423/DPA and the details submitted with it including plan nos 1170 S2 P01; 1175 S2 P08; 1303 S0 P01; 1310 S0 P01; 1313 S0 P01; 1315 S0 P01; 1350 S0 P01 and 1352 S2 P01 and subject to the following conditions:
 - 1) The materials used in the development hereby approved shall match the existing.
 - 2) Before the development commences, details of the materials to be used in the surfacing of the car park shall be submitted to and approved in writing by the local planning authority. The submitted details should demonstrate how sustainable drainage of the car park has been taken into account in the choice of materials. The development shall be carried out in accordance with the approved details. The car park shall be available for use prior to the occupation of the dwellings hereby approved and retained thereafter.
 - 3) Details of the refuse storage and cycle storage serving the development hereby permitted shall be submitted to and approved in writing by the local planning authority prior to the occupation of the dwellings hereby approved. The development shall be carried out in accordance with the approved

details. The approved refuse storage and cycle storage shall be made available for use prior to the occupation of the dwellings hereby approved and retained thereafter.

- 4) Before the development commences, a scheme for protecting the existing boundary hedges/ trees shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved protective measures.

Applications for costs

2. An application for costs has been made by Abbeytown Ltd against Dacorum Borough Council. This application 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, detached block of flats, as well as certain associated works.
4. 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 Framework, so far as relevant to the subject matter of the prior approval, as if the application were a planning application. It is on this basis I have considered this appeal.
5. 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.
6. The Council was satisfied that the proposal met the limitations set out in paragraph A.1 and would meet the requirements for permitted development. I have no reason to come to a different conclusion.
7. An additional drawing reference 20212-LSI-AAA-ZZ-DR-A-1351 S0 P01 was submitted with the appeal. This shows the proposed scheme viewed in the context of the other block of flats on site which is not proposed to be altered. It would not be necessary for this to be an approved plan for the proposed development, nor does it change the development proposed. While I have had regard to it in considering the appeal, this would not cause prejudice to any party.

Main Issues

8. The main issues are whether or not prior approval should be granted having regard to:

- the effect on the external appearance of the building; and
- the impact on the amenity of neighbouring premises including outlook, overlooking, privacy and loss of light.

Reasons

External appearance

9. Nightingale Walk consists of terraced blocks of three storey flats set in grassed surrounds with adjacent car parking, beyond which lies open countryside. Its position at the end of a residential road makes it a focal point in the street scene. The surrounding development is two storey residential properties however ground levels at Nightingale Walk are generally lower than the surrounding development. Consequently, the buildings at Nightingale Walk do not appear disproportionately high. There are mature trees around the boundary of the wider open area which serve to soften the urban appearance.
10. The height of the building would increase by a storey. However, due to the lower ground levels of the appeal site and its generally spacious setting, the additional storey would not result in the building appearing unduly prominent or otherwise visually intrusive in the street scene.
11. The proposal would replicate the existing regular fenestration pattern and roof profile. Materials would match the existing and this could be secured by condition. The proposal would therefore integrate well with the external appearance of the existing building.
12. For the reasons above, I consider the external appearance of the building would be acceptable and would meet the objectives of the Framework insofar as it requires development to be sympathetic to local character. The proposal would therefore comply with condition A.2(1)(e) of Schedule 2, Part 20, Class A of the GPDO.

Amenity

13. A terrace of flats is immediately adjacent to the appeal site and lies perpendicular to it. The windows of some of these properties are close to the building proposed to be extended.
14. Neighbouring properties in the adjacent block would largely have oblique views of the additional storey. Given the proportions of the windows, the changed outlook would not be materially different from that at present which would include the mass of the existing property. There would not be a material loss of outlook from the neighbouring flats.
15. There would be an increase in the sense of enclosure to those properties on the ground floor which have direct access to the external amenity space. However, these areas are enclosed significantly by the existing three storey building. The increased height of the block would not be materially harmful at ground floor level in this context.
16. There would be an increase in overlooking from the new dwellings to be formed. However there would not be any new relationship of overlooking to the surrounding residential properties and the effect would be neutral. It

may be that there would be the opportunity for overlooking into the grounds of the adjacent primary school. However this is a semi-public place, and there would be no expectation of total privacy in such a location.

17. At my site visit, I observed there were very few formal enclosures separating the ground floor windows from the surrounding spaces. Anyone moving through the site could pass in close proximity to these windows. However, the extended car park would be sited adjacent to a side elevation with no windows in it. A path from the extended car park to the existing paths around the building is proposed which would set away from the ground floor windows. The proposal would therefore not result in a new degree of overlooking to these windows.
18. The flats in the adjacent block have windows set at a right angle to the appeal site. The application was accompanied by a sunlight and daylight assessment. This did not find any adverse effects to the living conditions of surrounding properties. I have no reason to disagree with its conclusions given the orientation of the dwellings and the effect of the existing block on levels of sunlight and daylight.
19. There would be the potential for increased shadowing of the amenity area. However, the orientation of the buildings is such that there would already be a degree of shadowing to some of the amenity space. Furthermore, during the summer months, the sun would be sufficiently high in the sky so as to limit the effects of this.
20. For the above reasons, I conclude that the impact of the proposal on the amenity of existing neighbouring properties in relation to outlook, overlooking, privacy and loss of light would be limited and acceptable. The proposal would be consistent with Paragraph 130(f) of the Framework which, amongst other things, seeks a good standard of amenity for all existing and future occupants of buildings, in so far as it is a material consideration relevant to the impact on the amenity of the existing building and neighbouring premises as contained at Paragraph A.2(g) of the GDPO.

Other Matters

21. The proposal shows an extended and reconfigured car park arrangement. This would provide an additional 7 parking spaces and allocate two disabled parking spaces. Given the location of the site within the built up area of Hemel Hempstead, this would be sufficient to meet the need generated by the proposed development. An extended bin and bike storage area is also shown, although no details of how the space would be divided between both are shown. Further details can be secured by condition. The appeal should be determined on the basis that drivers will park appropriately and within the defined areas.
22. The extended car park would result in the loss of some of the open space around the existing premises. However, they are set in quite extensive open grounds and this loss would not be materially detrimental to the enjoyment of those properties. There is a tree adjacent to the car park which would be removed. However, hedge planting is shown, further details of which could be secured by condition and which would help to screen the car parking from the flats. The tree makes only a limited contribution to the amenity of the

premises and the provision of hedging would make a positive contribution. The maintenance of the landscaping is a matter for the landowner.

23. The standard conditions provide controls during the construction process and I have no reason to consider that the proposed residential properties would give rise to unacceptable levels of noise or pollution.
24. The proposal benefits from prior approval. It therefore does not create a precedent as each application for prior approval must comply with the relevant requirements and be assessed on individual planning merits which are unlikely to be precisely the same elsewhere. There is no restriction in this area which would prevent this type of application from coming forward. Concerns regarding the lack of social infrastructure and climate change do not form part of the matters to be considered in this appeal. There is no substantive evidence before me that the proposal would result in harm to protected species.
25. Matters relating to the effect of the proposal on loft space to residents, party wall, fire safety, structural stability, the need for a lift, asbestos within the building, and sound insulation between flats are all matters controlled by other legislation. The maintenance of the existing building and works that may be required to it are matters for the property owners and tenants. It is understandable that this process has caused stress and upset to residents, however I have no reason to think appropriate consultation has not been carried out. I have taken the comments of residents into account when reaching my decision insofar as they relate to the prior approval matters.

Conditions

26. Planning permission granted for development under Article 3(1) and Schedule 2, Part 20, Class A of the GPDO is subject to conditions set out in paragraph A.2 of that Class which specify 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 development 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 notify the local planning authority of the completion of the development; and that any new dwellinghouse must remain in such use. It is therefore not necessary for my decision to restate these conditions. I have listed the approved plans within my decision.
27. Paragraph B(18) of Part 20, Class A allows for the imposition of further conditions reasonably related to the subject matter of the prior approval. I have considered the Councils suggested conditions having regard to the tests set out at paragraph 56 of the Framework. As a result, I have amended some where necessary, for the sake of consistency or clarity and to ensure that they meet the tests in the Framework.
28. I have attached a condition requiring materials to match the exterior of the building. This is reasonable and necessary in the interests of ensuring that the external appearance of the building would be acceptable. Details of the surfacing material for the proposed car park should be agreed to maximise

opportunities for sustainable drainage. It is necessary for this to be agreed prior to the commencement of development. It is not reasonable or necessary to include a tailpiece regarding reconfiguring the site to allow access for fire tenders as the officer report confirms that the car park and land beyond could be accessed by a tender.

29. In the interests of promoting sustainable travel, a condition to secure details of cycle storage provision is necessary. I have also included a condition to secure refuse and recycling storage in the interests of managing the impact of the development on the amenity of the occupiers of the existing and neighbouring buildings. It is not possible to be certain when the proposed dwellings would be first occupied, therefore requiring details no less than 3 months prior to occupation is not a reasonable timescale. I have amended the condition to provide certainty.
30. The proposed car park extension would be in proximity to the landscaped boundary around the wider site and ensuring the works would not have an adverse effect on that planting would be reasonable and necessary with respect to the amenity of adjoining premises. A hedge is shown around part of the car park, however there are no details of its species. Further details, to ensure the hedge would provide effective screening, can be secured by condition which could also control its implementation.
31. The Planning Practice Guidance¹ confirms that the optional water efficiency standard in new dwellings can be set out in local plan policies where there is a clear local need. I have not been made aware that there is such a policy in the development plan. It would not be reasonable or necessary to require external lighting to be controlled.
32. The grant of planning permission under Article 3(1) is subject to the provisions of the GPDO for each class of development and compliance with regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Effectively, Article 3(1) provides a pre-commencement condition where the development would affect a European protected habitat. This includes a separate application to the Local Planning Authority under regulation 77 of the Habitats Regulations. This application can be submitted after the grant of prior approval, therefore I do not need to consider this matter further as part of this appeal.

Conclusion

33. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

Jennifer Wallace

INSPECTOR

¹ Housing: optional technical standards Paragraph: 014 Reference ID: 56-014-20150327 Revision date: 27 03 2015