



Appeal Decision

Site visit made on 7 January 2025

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 February 2025

Appeal Ref: APP/P5870/W/24/3346168

Helena House, 348-352 High Street, Sutton, SM1 1QE

- 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 AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Helena House Limited against the decision of the Council of the London Borough of Sutton.
 - The application Ref is DM2024/00476.
 - The development proposed is prior approval in relation to the erection of 2 new floors to provide 12 self-contained residential units.
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Decision

1. The appeal 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 the erection of 2 new floors to provide 12 self-contained residential units at Helena House, 348-352 High Street, Sutton, SM1 1QE, in accordance with the terms of the application, Ref DM2024/00476, subject to the standard conditions laid out at Paragraph AA.2 to Part 20 of the GPDO and the additional conditions set out at the end of this decision.

Preliminary Matters

2. A completed Unilateral Undertaking (UU) was submitted by the appellant during the appeal, and subsequently an updated version to correct minor drafting errors in that document was provided. The UU would prohibit future occupiers of the development from obtaining parking permits. In addition, revised floor plans were submitted detailing minor changes to the size of bedrooms within units 606 and 706 on the sixth and seventh floors. The Council had the opportunity to comment on the UU and the revised plans. As it does not change the substance of the proposal, no party's interests would be prejudiced by my consideration of this information.
3. The Council confirms that the revised plans address the third reason for refusal relating to the internal floor area of units 606 and 706. I agree with that assessment, and I have not, therefore, considered this issue further.
4. During the course of the appeal the revised National Planning Policy Framework (December 2024) (the Framework) was published. The main parties were provided with an opportunity to comment on the revised Framework and I have taken it into account in my decision in so far as it is material to my consideration of the issues.
5. Schedule 2, Part 20, Class AA of the GPDO permits 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.

Main Issues

6. The main issues are whether the proposal would constitute permitted development under Schedule 2, Part 20, Class AA of the GPDO, and if so, whether prior approval should be granted having regard to the external appearance of the building, and the transport and highways impacts of the development.

Reasons

Whether permitted development

7. The site is occupied by a six storey former office building which fronts onto High Street. The proposal is for the erection of two additional floors above the existing building to provide 12 self-contained flats. The submitted proposed plans also show a five storey front extension and alterations to the fenestration and materials of the existing building, which have been granted planning permission by the Council¹, but have not yet been implemented on site.
8. The Council considers that the proposal is not permitted development under Class AA on the basis that the submitted plans detail the previously approved extension and alterations to the existing building, which are not reasonably necessary for the appeal proposal and fall outside the scope of Class AA. While I acknowledge the Council's point that the changes to the existing building are not permitted under the prior approval procedure, the appeal proposal does not seek permission for these as they already benefit from planning permission. Rather, they are shown for illustrative purposes to demonstrate that the design and appearance of the approved changes, and the above additional storeys now proposed, would match.
9. The appellant considers that a planning condition could be used to resolve this matter and has referred to a recent prior approval appeal decision elsewhere², where a condition was imposed to ensure a previous permission is implemented before the prior approval development, in order to ensure adequate natural light to the development. The Council does not consider that such a condition is possible, however sub-paragraph (18) of paragraph B of Part 20 of the GPDO states that the local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
10. In this case, external appearance is subject to prior approval. I am satisfied that a condition is appropriate in this case to ensure the proposed new storeys reflect the external appearance as approved to the rest of the building below. Such a condition is reasonably necessary in the interests of the external appearance of the building, and it meets the other tests for conditions set out in Framework paragraph 57.
11. The Council has not found conflict with any other condition or limitation of Class AA, and I have no reason to find otherwise based on the evidence before me. I therefore conclude that the proposal would constitute permitted development. It is necessary to consider whether prior approval should be granted having regard to the matters set out in paragraph AA.2.(1). In this case, the external appearance of the building,

¹ Council Ref. DM2023/01269

² Appeal Ref. APP/E0345/W/22/3291549

and the transport and highways impacts, are in dispute between the parties and I have therefore focussed my attention on these matters.

External appearance

12. Consideration of the external appearance of the building includes the design and architectural features of (aa) the principal elevation, and (bb) any side elevation that fronts a highway. However, the *CAB Housing Ltd* judgement³ confirmed that the control of external appearance of the building is not limited to the effect on the subject property itself, but also includes the effect on neighbouring properties and the locality.
13. The existing building is vacant and has a dated and tired appearance which detracts from the character of the area. It is adjacent to a new six storey development directly to the south on the site of the former Prince Regent Public House, and is opposite Sutton Green, an area of public open space. The building is set back from the road with forecourt and undercroft parking to the front and a smaller entrance located on Lewis Road to the rear.
14. The character of the area is that of a busy high street with a range of commercial uses and a variety of building forms. While buildings approaching this section of High Street from the north are generally low-rise, this changes markedly in the vicinity of the site where building forms and heights begin to vary considerably. In addition to the existing building and the new six storey development adjacent to the site, there are also mid-rise and taller buildings further along High Street to the south, which rise to 13 storeys and sit alongside much lower buildings. These developments demonstrate that differing roof heights of buildings are a feature of the area and can be successfully integrated into the street scene.
15. While the height of the proposal would rise significantly above the adjacent two storey buildings to the north, it would not be notably taller than the existing building or the new six storey development immediately adjacent to the site. Seen in the context of this neighbouring building and taller buildings to the south further along High Street, the proposal would not appear uncharacteristically tall or dominant.
16. Furthermore, the scale and height of the building would be mitigated by the two upper floors being set in on all sides, thereby creating a subordinate relationship to the floors below. Viewed from Sutton Green it would be seen alongside other tall buildings and would not be imposing in this context. Moreover, the site and the surrounding area are designated as an Area of Taller Building Potential in the Sutton Local Plan 2016-2031 (the Local Plan), albeit that the proposal would exceed the height threshold of six storeys for this section of High Street, as set out in Appendix 7 of the Local Plan. Therefore, given the mixed character and appearance of the surrounding area, including the variety of roof forms and heights, I do not find that the proposal would be an unduly dominant addition to the street scene, and this conclusion is consistent with that of the Inspector for the previous appeal⁴, who found a part eight storey building on this site to be acceptable.
17. In terms of fenestration and materials, the two additional floors have been designed to have the same high quality appearance as the previously approved alterations below. The Council acknowledges that the approved scheme would significantly

³ *CAB Housing Ltd v SSLUHC & Broxbourne BC* [2023] EWCA Civ 194.

⁴ Appeal Ref. APP/P5870/W/20/3264318

improve the appearance of the existing building but considers that the design of the additional floors would be out of character with the existing building, given that the previously approved changes have not been implemented. Having regard to my reasoning above, a planning condition can be imposed which would effectively ensure that the new upper storeys reflect the appearance of the approved changes to the building below. The Council is concerned that the side elevations would appear stark and bland due to the lack of side windows. However, in this respect the design of the scheme reflects both the existing building and the approved scheme for the remainder of the floors below, which also lack side windows.

18. I note the Council's reference to a similar scheme elsewhere in the Borough which was dismissed at appeal⁵. However, the substantive details of that scheme and its specific site context have not been provided and so I cannot be sure that it is comparable to the appeal proposal, which I have assessed on its own merits.
19. For the above reasons, I conclude that the external appearance of the building would be acceptable. The scheme accords with Policy D4 of the London Plan (2021) and Policy 28 of the Local Plan, in so far as these policies are material to my considerations, and which require development to deliver good design and respond to local character.

Transport and highways impacts

20. The appeal site is located within Sutton Town Centre Controlled Parking Zone (CPZ) and has a public transport accessibility level of 5, which indicates a very good level of accessibility. I note that the location of the site relative to local facilities and services, including public transport, would be likely to promote occupation of the development without car ownership. The proposal is intended to be car-free given this high level of accessibility.
21. The Council says that the trip generation associated with the development will not have a significant impact on the highway network. I share that assessment given the scale of the development. However, the Council's concern relates to the absence of a legal agreement to prohibit future occupiers of the development from obtaining parking permits in the CPZ, which could result in unacceptable pressure on on-street parking to the detriment of highway safety.
22. The appellant has submitted a completed UU which would prohibit future occupiers of the proposed flats from obtaining residents and visitors car parking permits, save for disabled persons badge holders. The UU ensures a car-free development which would not, therefore, result in unacceptable pressure on on-street parking in the area. The obligations contained within it are necessary in the interests of highway safety, related directly to the development and fairly related in scale and kind. As such it would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework.
23. For the above reasons, and having particular regard to the UU, the transport and highways impacts of the development would be acceptable. In so far as it is material to my consideration of this issue, there would be no conflict with Local Plan Policy 37, where this seeks to prevent an increase in on-street parking which can adversely affect traffic flow and highway safety.

⁵ Appeal Ref. APP/P5870/W/23/3320647

Other Matters

24. Based on the evidence before me, I am satisfied that the proposal would not result in adverse impacts in respect of the other prior approval matters set out in paragraph AA.2, including the amenity of neighbouring occupiers. Although I note the concerns of the interested party relating to the effect of the proposal on local services, this is not one of the matters for consideration under this prior approval.

Conditions

25. I have had regard to the conditions suggested by the Council which I have considered against the advice in the Framework and Planning Practice Guidance. Some of the conditions suggested duplicate or are similar to the standard conditions set out in paragraph AA.2, including the requirement 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. Therefore, it is not necessary for me to impose these conditions.
26. There is no substantive evidence before me to justify the Council's suggested condition requiring a remediation strategy for any unforeseen contamination, particularly as the proposal does not involve ground breaking works and there are separate regulations dealing with asbestos.
27. As revised plans were submitted with the appeal, a condition listing the approved plans is reasonable in the interests of certainty. The appellant is willing to accept a planning condition to ensure the approved changes to the rest of the building are carried out prior to the upward extension. I consider such a condition to be necessary to ensure the building has a consistent overall appearance. In the interests of promoting sustainable transport choices, a condition to secure details of cycle storage provision is necessary.

Conclusion

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

M Ollerenshaw

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: HHS-SB-EX-AL-010, HHS-SB-PR-AL-050 Rev P5, HHS-SB-PR-AL-100 Rev P3, HHS-SB-PR-AL110 Rev P4, HHS-SB-PR-AL-120 Rev P5, HHS-SB-PR-AL-130 Rev P5, HHS-SB-PR-AL-140 Rev P5, HHS-SB-PR-AL-150 Rev P5, HHS-SB-PR-AL-160 Rev P6, HHS-SB-PR-AL-170 Rev P6, HHS-SB-PR-AL-180 Rev P5, HHS-SB-PR-AL-200 Rev P3, HHS-SB-PR-AL-300 Rev P2, HHS-SB-PR-AL-301 Rev P5, HHS-SB-PR-AL-310 Rev P2, HHS-SB-PR-AL-311 Rev P4, HHS-SB-PR-AL-320 Rev P2, HHS-SB-PR-AL-321 Rev P4, and HHS-SB-PR-AL-322 Rev P4.
- 2) The development permitted by this Prior Approval shall not be occupied until all the works shown on the drawings approved pursuant to the planning permission Ref DM2023/01269, dated 18 December 2023, have been completed.
- 3) The development hereby permitted shall not be occupied until secure cycle storage facilities have been provided in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The cycle storage facilities shall thereafter be retained as approved.