



Appeal Decision

Site visit made on 9 January 2025

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2025

Appeal Ref: APP/U5930/W/24/3347799

159 Crownfield Road, London E15 2AS

- 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 1, Class AC of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Bansal against the decision of Waltham Forest London Borough Council.
 - The application Ref is 240534.
 - The development proposed is the erection of an additional storey to create a studio flat. Removal of existing porch at ground floor level. Formation of new entrance door at ground floor level.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Schedule 2, Part 1, Class AC of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order), permits development consisting of works for the construction of new dwellinghouses immediately above the topmost storey on a terrace building in use as a single dwellinghouse within the meaning of Class C3, where the development comprises, amongst other things, up to two additional storeys, in the case of an existing dwellinghouse consisting of two or more storeys.
3. As detailed within the Order, development under Class AC is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval. The local planning authority may refuse the application where it considers that the proposal does not comply with the limitations or restrictions that are applicable to such permitted development.
4. The provisions of the Order require the local planning authority to assess the development proposed solely on the basis of a limited number of considerations. The Council has raised concerns in respect of the effect of the development upon the external appearance of the building, the transport and highways impacts, and failure to secure mitigation against the Epping Forest Special Area of Conservation (SAC). I therefore consider these to be the main issues in the appeal.

Main Issues

5. The main issues are therefore whether prior approval should be given, having particular regard to 1) the resulting external appearance of the dwellinghouse, 2) the transport and highways impacts, and 3) the effect on the integrity of the Epping Forest SAC.

Reasons

External Appearance

6. The appeal property is a two-storey terrace dwellinghouse. It is located in a terrace of 9 properties which are linked together by a recessed section between the fourth and fifth property. The properties are of a uniform scale and similar design. The terrace is set back slightly from the building line of the other properties on this section of Crownfield Road. This long section of Crownfield Road which stretches from Major Road to Edith Road is made up of two storey properties on both sides.
7. Case law¹ has established that, when considering the '*external appearance of the dwellinghouse*' this need not be solely confined to the building in question and may include its wider context or how it relates to the street-scene. Appearance is not a matter to be assessed in a vacuum or in isolation, particularly in this case where the appeal building is located within a terrace of closely related properties.
8. Paragraph AC.2(1)(e) outlines that the external appearance of the building, includes the design and architectural features of the principal elevation and any side elevation that fronts a highway. It is therefore reasonable, in the planning judgment under paragraph AC.2(1)(e), to take account of the effect of the proposed external appearance of the dwellinghouse on the wider character and appearance of the area.
9. The proposed development is to erect an additional floor on top of the existing two storey terrace building to create an additional residential property. The proposed materials and general design of the extension matches that of the existing dwelling; however, the extension would significantly add to the height of the building which is seen within a wider terrace which, has a consistency and rhythm in terms of height. Although the surrounding properties are of various designs, there is a continuity of scale across two storeys. This gives the street a sense of uniformity which positively contributes to its overall character and appearance.
10. In the context of the above, the proposed development would, appear as a dominant, bulky and incongruous addition to the appeal building. It would visually disrupt the otherwise homogeneous scale of the existing terrace and be seen as a piecemeal addition. The sudden increase in height would jar with the remainder of the terrace. The setback of the terrace from the other properties of the street would relieve the impact somewhat, however it would not be to the extent whereby there would not be harm caused.
11. The appellant has referred to similar developments undertaken at 1 and 5a Burgess Road and at 2 Major Road. At Burgess Road, the developments are of a similar design and are sited at each end of the terrace, they create a symmetrical appearance to the short terrace of four properties. I acknowledge, as the appellant outlines, that the extension at no. 5a was approved first, although the reference numbers suggest that they would have been pending consideration at similar times. It is also pertinent that it pre-dates the relevant case law which considered the matter of 'external appearance' in prior approval cases. Nevertheless, the fact remains that the location is quite different to the appeal site as there is a variation of building heights.

¹ 1 CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC [2022] EWHC 208 (Admin)

12. Similarly, the area around 2 Major Road includes other three-storey properties and unlike the appeal property it is not part of a long street scene which is made up of two-storey properties. I have had regard to the examples given, including the appeal decision² at 2 Major Road, however none of the examples lead me to conclude in favour of the appeal, which I have considered on its own individual planning merits.
13. For the above reasons, I find that significant harm would be caused to the external appearance of the building. In this respect, the proposal would not accord with paragraphs 131 and 135 of the National Planning Policy Framework (2024) (the Framework) which seek to create high quality, beautiful and sustainable buildings, and that developments are visually attractive and sympathetic to local character, including the surrounding built environment.

Transport and Highways Impacts

14. The Council consider that no information has been submitted to assess the impact of the transport and highways impacts of the development. The reason for refusal refers specifically to loading methodology and site access during the construction phase, and the absence of a legal agreement to ensure that the development is car-free.
15. In terms of the transport and highways impacts, given the scale and nature of the development, whilst a Construction Logistics Plan has not been submitted, it would be reasonable to assume that the development could be undertaken without causing demonstrable harm to highway safety. Had the appeal been allowed, a planning condition could have been imposed to require further details of how the highways impacts of the construction phase could have been managed.
16. In terms of ensuring that the development remains car-free, the Council consider that this could be dealt with by planning condition. I agree that such an approach would have addressed the requirement.
17. I also consider that the refuse and cycle storage arrangements as set out would not cause demonstrable harm in terms of transport and highways impacts.
18. For the reasons given above, I therefore conclude that the proposed development would not result in unacceptable transport or highways impacts. It would comply with the requirement of paragraph 116 of the Framework that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Epping Forest SAC

19. The appeal site is located within the zone of influence (ZOI) for the Epping Forest Special Area of Conservation (SAC) which is a European designated site.
20. Regulation 75³ provides that it is a condition of any planning permission granted by a general development order on or after 30 November 2017 that development which is (a) likely to have a significant effect on a European site, alone or in combination with other plans or projects and (b) not directly connected with or necessary to the management of the site must not be begun until the developer

² APP/G5750/W/22/3305070

³ The Conservation of Habitats and Species Regulations 2017

has received the LPA's written notification of approval of an application made under Regulation 77.

21. The LPA may approve the Regulation 77 application only having ascertained that the development will not adversely affect the integrity of the European site. Under Regulation 78(3)(a), a Regulation 75 (via Regulation 77) approval is to be treated as an approval required by a condition imposed on a grant of planning permission for the purposes of the appeals provisions of the Act. In other words, Article 3(1) and Regulations 75-78 operate to impose a pre-commencement condition on all development that is permitted by the Order and would affect a European site.
22. Permitted development cannot be lawfully begun until the developer has made a Regulation 77 application and received written notification from the LPA to the effect that the development would have no adverse effect on the integrity of the European site. Any necessary mitigation measures must be secured by way of a planning obligation or other legal agreement which will again be for the LPA to determine and outside of the prior approval process. Conditions imposed on grants of prior approval must be reasonably related to the prior approval matters.
23. Any requirement to seek prior approval before beginning permitted development is also a requirement to seek an approval required by a condition imposed on a grant of planning permission. However, neither the Order or the Regulations prescribes the sequencing of prior approval and Regulation 77 applications. The requirements of both procedures must be met before the development can be lawfully begun, but it is not the case that the developer must have written notification of a Regulation 77 approval before seeking prior approval, or vice versa.
24. The Regulation 77 application may be submitted and approved after prior approval is given for the development. If the LPA objects to a prior approval appeal on the basis that a Regulation 77 application would be required, because the development would affect a European site, but no such application has been made or approved, it does not follow that the prior approval appeal must be dismissed.
25. Were prior approval to have been granted (or found not to be required) development cannot be begun until the developer has received written notification of the approval of the LPA under Regulation 77, but that does not need to precede the prior approval process.
26. It is therefore the case that the appeal should not be dismissed due to the impacts on the SAC as this is required to be addressed separately prior to commencement.

Other Matters

27. The appellant has commented on the Council's approach and the purpose of the legislation to permit such developments. I do not consider that the Council's approach in considering the matter of the external appearance of the building was incorrect. It is clear in the legislation that approval of the form of development proposed is not a *fait accompli*. The fact that the appellant has referred to examples of where similar developments have been permitted would also suggest that there are indeed circumstances where such development proposals are considered to be acceptable.

Conclusion

28. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR