
Appeal Decisions

Site visit made on 10 February 2025

by **L N Hughes BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10th March 2025

Appeal A Ref: APP/N1540/W/24/3347868

Flat Blocks 1-14 And 15-22 And 23-36, Amberry Court, Harlow CM20 2PX

- 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 Mr Paul Adler of Can Prop Ltd against the decision of Harlow Council.
 - The application Ref is HW/PANDBF/24/00035.
 - The development proposed is construction of 2 additional floors to blocks 1, 2 and 3 resulting in 30 additional residential units.
-

Appeal B Ref: APP/N1540/W/24/3347860

Flat Blocks 1-14 And 15-22 And 23-36, Amberry Court, Harlow CM20 2PX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Paul Adler of Can Prop Ltd against the decision of Harlow Council.
 - The application Ref is HW/FUL/24/00036.
 - The development proposed is alterations to external communal areas to provide car parking and cycle storage provision.
-

Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. These 2 appeals concern the same site and buildings. I have determined each on its own individual merits, although I have dealt with many aspects together in my reasoning to avoid duplication.
4. The application forms and decision notices state the company name as 'Canprop Ltd', but the appellant has confirmed 'Can Prop Ltd', as on the appeal forms.
5. The Appeal B decision notice description of development refers to 17 car parking spaces and 40 covered cycle spaces. Across the external communal areas as a whole there would be more than 17 car parking spaces provided. I have therefore used the application form description of development as the basis for my decision.
6. The GPDO Part 20 Paragraph B.(15)(b) identifies that regard is to be had to the Framework, so far as is relevant to the subject matter of the prior approval, as if the application were a planning application. Where I have cited development plan policies, for the avoidance of doubt, such references only relate to Appeal A insofar as they are material in this instance.

7. Schedule 2, Part 20, Paragraph B.(3) of the GPDO states that the Local Planning Authority may refuse a prior approval application where in its opinion the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified as being applicable to the development. It was on this basis that the Council refused to grant the Appeal A prior approval, and my determination is made on the same basis.
8. The 'Proposed Site Redevelopment Site Plan'¹ identifies 8 blue parking spaces to the north of the central greenspace. The easternmost of these would require the removal of the tree labelled T16. However, this is specifically identified for protection on the Tree Protection Plan². The only references to tree removal in both main parties' evidence is tree T12 on the western boundary, which was already dead prior to the arboricultural survey. I have therefore assumed a cartographical error in order to provide a 'best case scenario' for the appellant, and have not taken the loss of T16 into account. I would have sought further clarification had I been minded to allow the appeals.
9. The Government published a revised version of the National Planning Policy Framework ('the Framework') in December 2024, plus minor amendments in February 2025, as well as Planning Practice Guidance amendments. It has not been necessary to go back to the parties in this regard, as their content have not been materially altered in respect of the main issues before me.

Main Issues

10. Amberry Court comprises three residential 3 storey blocks containing a total of 36 dwellings. Appeal A seeks to add 2 additional storeys to each, to create 30 additional studio units.
11. The GPDO Part 20 Class A 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, subject to a number of criteria. Part A.1. sets the circumstances when development would not be permitted. There is no dispute that the proposal under Appeal A would meet the Part A.1 permitted development criteria in full.
12. Where development is permitted under Part A.1, this is then subject to the conditions set out in Part A.2, whereby A.2(1) requires that before beginning the development, the developer must apply to the Local Planning Authority for a determination as to whether its prior approval will be required for various matters.
13. The main issues for Appeal A are whether the proposed development would comply with the permitted development requirements set out at Part 20 Class A of the GPDO, with specific regard to:
 - A.2(1)(a) regarding the transport and highways impacts of the development; and
 - A.2(1)(e) regarding the external appearance of the building.

¹ SO-793-20

² Arbtech TPP 01

14. Appeal B seeks planning permission in order to provide parking for the dwellings sought under Appeal A. The main issues for Appeal B are:
- the effect of the proposed development on the character and appearance of the area; and
 - whether the proposed development would provide adequate vehicle parking.

Reasons

Character and Appearance

Building Design

15. The buildings date from the 1960s and are finished in a mixture of brick and render. The Appeal A proposal would add 2 new upper floors, and stair cores on the northern elevations, all faced with cladding. An external decked access to each of the new floors would be incorporated into the eastern elevations of Blocks 1 and 3, and the western elevation of Block 2. Although not part of the development for which prior approval is required, the existing render would also be repaired, plus there would be further articulation through differentiation of the existing stair cores.
16. The buildings would appear somewhat disjointed, due to the use of the 3 or 4 different facing materials, and as it would be relatively apparent that the top two floors had been added separately. The new floors would also appear to be somewhat top-heavy, especially on the decked elevations, and particularly so for Block 1 due to its smaller length.
17. However, this range in materiality and building form would also provide for a level of visual interest. My site visit identified the wider context of the area to include a range of similar height residential buildings in a variety of forms and materials. To some extent the upper floor decks would also reference those in the series of flat blocks to the south west on the opposite side of First/Mandela Avenue. In taking this into account, alongside the findings of the previous Inspector in the appeals dismissed on the site in February 2023³, on balance I find the majority of the scheme to be sufficiently cohesive as a whole.
18. However, the new external metal fire escape staircases on the southern gables of Blocks 2 and 3 would be evident in design terms as a lower quality 'after thought'. While they would not dominate the buildings in terms of comparative scale, they would be relatively prominent due to their height and their siting alongside and close to the busy route of First/Mandela Avenue. This utilitarian finish would be incongruous compared with the cohesion of the other materials, and of the buildings' form and scale as a whole. They would also draw prominence through being the only such element within the immediate vicinity.
19. As such, the fire escape staircases would conflict with the Framework paragraph 135(b) and (c) insofar as it is material. This is because they would not be visually attractive as a result of good architecture, or sympathetic to the surrounding built environment and landscape setting.

³ APP/N1540/W/21/3284423: refusal to grant approval required under a development order - Additional 2 storeys on each of the three existing blocks to create 30 new flats. 20 x 1 bed studios, 5 x 2 bed flats, 5 x 3 bed flats. New external render applied to each block in its entirety.

APP/N1540/W/21/3287500: Failure to give notice within the prescribed period of a decision on an application for planning permission - external works including 54 car parking spaces, 30 cycle spaces, new playground area and associated landscaping.

Other Open Spaces

20. The Harlow Local Development Plan (HLDP) defines 'Other Open Spaces' as private and public open spaces which are not otherwise allocated, which can vary in nature and quality and can include landscaping strips, amenity spaces and gardens, and areas of land between buildings. They make a positive contribution to the overall character and design of Harlow, through their specific role or function. The HLDP Policy LP6(a) identifies that their development must not compromise the landscape character, openness, or urban design principles of the town. This is because their preservation is fundamental to ensuring that the original design of Sir Frederick Gibberd's masterplan for Harlow is respected.
21. The Amberry Court blocks surround a grassed central green amenity space containing a few trees, with other grassed areas surrounding the blocks, and a landscaped strip alongside First/Mandela Avenue. The site is therefore a typical example of the Harlow masterplan in effect, in using these Other Open Spaces to offset the lack of private garden space. In combination with each other and with the landscaped avenue effect, these spaces form a cohesive whole which contributes to the local and wider character.
22. The proposal would place parking on the open space to the west of Block 2, and on a smaller area to the west of Block 1 by the bin store, as well as using minor areas for new paths and the cycle stores. Although the Block 2 parking and its access would be grass guard permeable surface, parked cars would clearly indicate that its loss as green open space.
23. The previous Inspector identified that the affected Other Open Space had no strong landscape character, but that there would be conflict with Policy PL6 in respect of the urban design principles of the town. I conclude similarly in this instance, despite the reduced impact compared to that scheme due to the retention of the site's largest and central open space and other areas.
24. The proposal would negatively impact on the original concept of surrounding the blocks with generous green areas. Even with additional landscaping, a relatively substantial element of Other Open Space would be removed in terms of its contribution to the setting and openness between Block 2 and the neighbouring residential block outside of the appeal site. Thus, the original urban design principles would be compromised to a harmful extent. Although there would be no more parking spaces than necessary in response to the previous Inspector's concern, this does not diminish the intrinsic harm.
25. Overall, the proposal under Appeal A would conflict with the GPDO class A.2(1)(e) because it would have a harmful impact on character and appearance with relation to the external appearance of the external staircases. The proposal under Appeal B would cause harm to the character and appearance of the area due to the loss of Other Open Space, and would conflict with the HLDP Policy LP6(a).

Parking Provision

26. The HLDP Policy IN3 identifies that parking must be provided in accordance with the adopted Essex Vehicle Parking Standards, unless otherwise indicated elsewhere in the Local Plan and/or supporting documents. These Standards require a minimum of 1 vehicle parking space for each 1 bedroom dwelling. However, the Highway Authority confirmed during pre-application discussions that

0.5 spaces per dwelling plus 2 visitor spaces would be acceptable, given the Harlow town centre proximity, and public transport options. Despite interested party representations, on this basis I see no reason to require a higher level of parking. This therefore equates to a need for 15 spaces plus 2 visitor spaces.

27. The parking scheme for the new flats sought under Appeal B would create 14 new spaces to the rear of Block 2 on the existing grassed area, and 3 spaces in front of Block 1, of which 2 would be visitor spaces. Parts of the existing hardstanding, and some grassed area by the bin store, would provide 14 further spaces for existing residents. Forty cycle parking spaces would also be provided, with which I take no issue. For the avoidance of doubt, I have not taken the parking area for 37-44 Amberry Court into account.
28. Informal parking would also remain available along the driveway access as at present. The appellant suggests that this would provide 'at least' 4 spaces, although these are not marked on the Proposed Site Redevelopment Plan. They are identified on the Parking Plan submitted within the Appeal B Unilateral Undertaking (UU), but I have no technical information of the practical achievability of this plan. More than 3 spaces along the driveway would be likely to conflict with the safe and proper use of the junction into the site, as demonstrated by the verges which were very churned up on my site visit, and especially with the increased vehicle and pedestrian traffic from 30 additional flats.
29. The Council considers that 5 existing spaces would be lost, in order to create the visitor parking south of Block 1, and to accommodate the vehicular access to the new parking area adjacent to Block 2. The Council only counts 2 of the proposed Block 1 spaces due to potential manoeuvring difficulty, and thus identifies a net gain of only 11 spaces compared to at present. Although parking standards require a middle parallel space to be slightly longer than the others, this does appear achievable, and I therefore accept all 3 spaces south of Block 1 in the calculations.
30. The majority of the possible existing parking spaces, including along the access road, were occupied during my morning visit. Although a site visit is inevitably only a snapshot in time, I would expect for additional cars to return and seek parking in the evening time. Existing parking pressure was also clearly evident for the previous Inspector and during the Council's visit, is referenced by multiple interested party representations, and can be seen in the appellant's aerial imagery. I find the parking need from the existing 36 flats to be more than the 14 spaces which would be available.
31. The proposal would therefore cause parking conflict, and harmfully impact highway safety. Paragraph 116 of the Framework establishes that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety. I find this would be the case. Overall, the Appeal B proposal would conflict with the HLDP Policy IN3, due to inadequate vehicle parking provision.
32. Accordingly, Appeal A would therefore not comply with the GPDO class A.2(1)(a) regarding the transport and highways impacts of the development. It has not been demonstrated that the proposal would satisfy the requirements of Schedule 2, Part 20, Class A of the GPDO, and therefore is not development permitted by it. It would not comply with the limitations and restrictions specified as being applicable, in that it has not gained prior approval as it would have a harmful transport and highways impact due to insufficient parking.

Other Matters

33. Case law has established the basic principle of determining whether a fallback exists⁴. For a prospect to be a real prospect, it does not have to be probable or likely, a possibility will suffice. It has to be only more than a merely theoretical prospect.
34. The appellant identifies that if the appeals are dismissed, they will restrict all existing occupants from parking within the site. Indeed, the UU for Appeal B could enshrine this as a binding requirement. They identify that they are the site freeholder with no leasehold flats having parking rights, there is no existing allocated parking, and that any marking out of spaces has been without the landlord's consent. The eventual outcome is that parking for the proposed 30 new dwellings could then be provided on the existing hardstanding, which would at that point contain no existing parking. They consider this would not be development under Section 55 of the 1990 Act.
35. I find the fallback to exist as a possibility, and thus it is a material consideration, to which I ascribe weight in the Planning Balance below.
36. The Council raised concerns about the lack of active frontages for the deck access, and the potential impact on resident amenity for deck access, but did not refuse the proposal on this basis. I similarly do not find this to be so harmful so as to justify dismissal, particularly in being mindful of the design constraints of creating additional floors above an existing building. I also acknowledge the interested party's concern about the lack of lift access to the upper storeys, but it is unnecessary to consider this matter any further as I am dismissing the appeals on other grounds.
37. The site's northern boundary adjoins the Town Park Netteswell Cross Conservation Area (CA), with the adjoining site having planning permission for redevelopment for 20 dwellings⁵. The Council has cited no impact upon the CA, and I see no reason to find otherwise. The impact of the height increase of the appeal site blocks would have no effect on the CA, the significance of which is focused upon the open spaces and buildings further north and north east.

Planning Balance

38. The Appeal B proposal would enable the provision of 30 dwellings, which would be well located in relation to the town centre. The Framework seeks to significantly boost the supply of homes, and provides support for the development of windfall sites, although there is no dispute that the Council can demonstrate more than a 5 year supply. There would also be moderate economic and social benefits associated with the construction and occupation of the dwellings. The prior approval process already inherently accounts for such benefits, and Appeal B would enable them rather than directly provide them. I give moderate weight to these benefits in this instance.
39. The proposed cycle storage could benefit existing occupiers as well as new occupiers, in supporting sustainable travel and associated environmental and health benefits. I give this minor weight in favour.

⁴ Mansell v Tonbridge and Malling BC & others [2017] EWCA Civ 1314; Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government [2009] EWCA Civ 333; R (Zurich) v Lincolnshire Council [2012] EWHC 3708.

⁵ Ref: HW/FUL/20/00378

40. The appellant indicates that the construction of the additional flats would assist in funding much-needed repairs to Amberry Court. These works would be beneficial in their own right, and help to defray the costs that would otherwise be passed on to existing residents as service charges. However, this would primarily be a private benefit to the relevant parties, and many residents have objected to the proposal in any event. I therefore give this only very minor weight in favour.
41. The Appeal A proposal would have a harmful effect on the character and appearance of the area, with relation to the external appearance of the building under the GPDO Part 20 Class A.2(1)(e). Benefits such as the additional housing supply, and the funding for repairs cannot be taken into account for Appeal A under the prior approval process. Therefore, I find the proposal is a development for which an application for planning permission would be required, regardless of any conclusion on whether it would provide adequate parking provision with regard to its transport and highways impacts.
42. As such, the rationale for providing the proposed level of parking spaces under Appeal B no longer exists, and none of the UU scenarios would be executed. Appeal B would provide more parking than is necessary on the site, and there would be no housing supply benefits to outweigh the harm to the character and appearance of the area. Appeal B would thus be dismissed on this basis. A circular scenario results, whereby Appeal A would not comply with the GPDO Part 20 Class A.2(1)(a) regarding the transport and highways impacts of the development, as insufficient parking would be provided.
43. In the context of this position, the combined proposal of both appeals as a whole must be considered against the fallback position of restricting all existing parking.
44. The fallback would be harmful, because there appears to be no obvious other local parking option. Adjacent residential developments have permit parking schemes, and the roads have parking restrictions. As noted by the previous Inspector, the influx of numerous cars needing to park nearby would be dangerous, even if this could not be directly controlled via the planning regime. The lack of parking would be so significant that residents may be tempted to potentially dangerous parking, with little choice but to flout Regulations from time-to-time.
45. Notwithstanding this, there is only so far ahead that I can consider the fallback before it becomes too great a level of speculation to have more than minimal weight. At the point that it had been undertaken and a new proposal worked up, different considerations would then be before the Council. For example, the Highway Authority may require a higher provision of spaces for the new dwellings, following increased local parking pressure caused by the previous displacement.
46. I would also expect the appellant to face significant pressure to retain some existing parking. In particular, the existing parking permit system was evident on my site visit, which includes multiple prominent signs that permits must be clearly displayed, and which specify a charge for non-compliance. This permit system and the history of on-site parking strongly indicate that residents expect some level of parking to be available, and indeed may have purchased or leased the flats on such basis or inference. No information has been presented to provide certainty that legal or other challenges would not be possible on this basis. Notwithstanding that residents have had the opportunity to make comment, none appear to have understood the implications of the fallback, such that there is limited information before me on this matter.

47. Based on such likely resident pressure, there could be a future revised parking layout to allow some existing residents to retain parking while using less greenspace. The Parking Plan submitted within the UU supports this as a possibility, in rationalising the existing hardstanding to fit in more vehicles through using only minimal greenspace. This would reduce the fallback harm.
48. Alternatively, existing dwellings would likely become less appealing for existing occupiers. Those who could not find suitable parking elsewhere may after the passage of time either give up their car, or move away from the site. This again could reduce the initial harm of the fallback by reduced the parking need.
49. My above deliberations indicate that although the fallback clearly exists, significant uncertainty exists over the permutations of its possible outcomes and implications, and the level of resulting harm to highway safety. I therefore give the fallback moderate weight in favour of the appeal proposals at this time.
50. Overall, I give moderate weight to the harm to the character and appearance of the area caused by the fire escape staircases, moderate weight to the harm to the character and appearance of the area caused by the loss of the Other Open Space as the setting to Block 2 and First/Mandela Avenue, and minor weight to the harm to highway safety from the reduced parking provision for the existing flats.
51. Under Appeal B I give moderate weight to the benefits of enabling new dwellings, minor weight to the benefit of the cycle parking, and very minor weight to the repair of the buildings. Under both appeals I give moderate weight to the fallback position of removing existing parking on the site.
52. Although the original intentions behind the disposition of buildings and spaces in Harlow may evolve over time as the needs of people and places change, neither the benefits nor the fallback position would outweigh the harm which would be caused in this instance. The proposal would not strike the right balance between parking provision and retaining the character of the area. Appeal B would conflict with the HLDP Policies IN3 and L6(a).

Conclusion

53. For the reasons given above and having regard to all other matters raised, I therefore conclude that the proposal under Appeal A is not permitted development under Schedule 2, Part 20, Class A of the GPDO. Consequently, it is a development for which an application for planning permission would be required.
54. Appeal B would conflict with the development plan taken as a whole. With no other material considerations outweighing this conflict, for the reasons given above I conclude that Appeal B is dismissed.

L N Hughes

INSPECTOR