



Appeal Decision

Site visit made on 24 February 2025

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 03 April 2025

Appeal Ref: APP/C5690/W/24/3351757

20A Hazelbank Road, Lewisham, London SE6 1TL

- 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 AD of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Ms Patsy White against the decision of the Council of the London Borough of Lewisham.
 - The application Ref is DC/24/135779.
 - The development proposed was originally described as “erection of a single storey 1 person, 1 bedroom flat on top of a detached C3 Dwelling.”
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the Council's notice of decision, the National Planning Policy Framework (the Framework) was revised on 12 December 2024. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes albeit that the numbering of paragraphs has changed. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context.
3. The appellant has provided an additional plan that was not before the Council when it made its decision. The plan identifies floor to ceiling heights of 2.3m within the same built form as proposed, which is not substantially different from that previously submitted. Notwithstanding its submissions, the Council has had an opportunity to comment on this plan, thus any procedural unfairness has been avoided. For these reasons, I am content to accept this additional plan.
4. In that context, there is a further plan titled HR.01.02 with 49 Crouch Hill as an address. This shows a substantially different design to that submitted with the application. I consider this to be a matter that those consulted on this proposal may have wished to have had the opportunity to comment on. The appeal process should not be used to evolve a scheme and in applying the 'Holborn Principles' I have made my decision on the basis of the revised ceiling height plan, and the plans considered by the Council, on which interested people's views were sought.

Background and Main Issues

5. The appeal is made pursuant to Schedule 2, Part 20, Class AD of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). Class AD permits development consisting of works for the

construction of new dwellinghouses on detached buildings in use as dwellinghouses.

6. The Planning Practice Guidance states that *permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations to control impacts and to protect local amenity.* This is effectively a 2-stage process where it is necessary in the first instance to determine whether or not the proposal is permitted development.
7. For development to be permitted by Class AD, paragraph (1) requires that it consists of *works for the construction of new dwellinghouses immediately above the topmost storey on a detached building in use as a single dwellinghouse.* If considered to be permitted development AD.-(1)(2) allows reasonably necessary engineering operations to construct the additional storey. Furthermore, a number of conditions at paragraph AD.2 must also be satisfied. 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 prior approval matters.
8. In determining such an application, paragraph B.(15) (b) of Part 20 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. I have considered the appeal on this basis.
9. 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.
10. The Council refused the application for a number of reasons including claimed non-compliance with space standards and conditions in AD.2 relating to refuse storage linked to highways matters, the effect on the character and appearance of the area and living conditions of nearby occupiers.
11. During the appeal, the appellant queried the Council's comments in its officer report as to whether the proposed excavation works fell within the scope of Class AD. The Council agree that an error was made and that its concerns in this regard should have been included in its reasons for refusal. Given that both main parties have commented on this, it would therefore not be inappropriate for me to include this matter within the main issues.
12. Accordingly, I consider the main issues in this case to be:
 - whether the proposed development would be permitted development with regard to the provisions of Part 20, Class AD, paragraph AD.-(1) of the GPDO, and if so:
 - whether prior approval should be granted, with particular regard to reasonably necessary building operations, the effect on highways, character and appearance, and the living conditions of nearby neighbours with regard to outlook and privacy.

Reasons

Permitted development

13. The existing dwelling is said to comprise a timber framed structure on a foundation that would not be capable of supporting an additional storey. Engineering works would require substantial excavation below the existing structure. The appellant says this would result in the retained storey of the existing building commencing below ground level. The plans show that the ground floor of the resulting building would be below that of the current arrangement. This means that it would represent a new building, rather than a retention, as suggested. The Council reviewed the scheme accordingly, and as represented on plan. Consequently, it did not misdirect itself in determining the application.
14. While the end result may well reduce the overall height of the building, the works required to carry out this operation would not take place immediately above its topmost storey. Therefore, an assessment of the extent of engineering operations required to construct the additional storey would not be required. For the reasons given, the proposal would fail to comply with Part 20, Class AD.-(1) of the GPDO and does not therefore constitute permitted development.

Other Matters

15. As I have concluded that the proposed development is not permitted development under Class AD.-(1) of the GPDO, it is not necessary for me to make any determination on space standards or contested conditions set out in AD.2(1)(a), (e), or (g).

Conclusion

16. For the reasons given above, the appeal is dismissed.

J Hills

INSPECTOR