



Appeal Decision

Site visit made on 4 May 2023

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 25 July 2023

Appeal Ref: APP/P5870/W/22/3306043

Helena House, 348-352 High Street, London SM1 1PU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 appeal is made by Helena House Limited against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2021/02062, dated 7 October 2021, was refused by notice dated 4 March 2022.
 - The development proposed is a two storey roof extension above principal building to create 12 additional dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) establishes that new dwellinghouses on detached buildings in commercial or mixed use are permitted development. For development to be permitted it must satisfy the limitations set out at paragraph AA.1 and the conditions at paragraph AA.2.
3. Although the parties agreed the proposal meets the limitations set out in paragraph AA.1, during my visit I noted that the appeal building was connected to the neighbouring properties. The parties were requested to comment on whether the appeal building met the Class AA requirement of being 'detached'.
4. In their response, while the Council considered the proposal constituted an attached building, the appellant highlighted that under the interpretation section of Part 20, 'detached' is detailed as meaning 'the building does not share a party wall with a neighbouring building'. The appellant cited appeals APP/C/11/2155491 and APP/W5780/X/19/3230365 which considered the definition of 'party wall'. While the circumstances of these appeals are different to the proposal, I consider the approach to defining 'detached' to be relevant. While details for the first appeal are limited due to its age, it is indicated by the appellant that it makes reference to the definition of 'party wall' in the Party Wall etc. Act 1996 (Party Wall Act). In the second appeal, while reference to the Party Wall Act was not directly given, the definition used in the appeal was comparable to it. As Part 20 does not provide a definition for 'party wall', then I conclude that the Party Wall Act definition is reasonable and appropriate.

5. The appellant confirms that the appeal building's side walls are entirely within its own curtilage and are not used by the adjoining owners to support or separate their buildings. I have no reason to doubt this and as such I conclude the appeal building does not share a 'party wall' with the existing neighbouring properties and can be classed as 'detached'.
6. In relation to the other limitations set out in paragraph AA.1, the main parties agree the proposal and appeal site meets all listed requirements and I have no reason to question this. Accordingly the appeal scheme would constitute development permitted under Class AA, subject to the prior approval of certain matters.
7. Paragraph AA.2 requires developers to apply to the local planning authority for their prior approval in relation to a number of specified matters, set out at subparagraphs 'a to l'. Within the Officer's Report, other than external appearance of the building (AA.2 (1)(e)) and transport and highways impacts of the development (AA.2 (1)(a)) the other conditions listed are noted as being acceptable. On review, other than noting that the Council incorrectly refer to the building height as being less than 18 metres and did not consider Paragraph AA.2 (1)(k) and (l) in detail, I have no reason to disagree with its findings. I have considered the appeal on this basis and in terms of the height of the building I return to this at the end of my decision.
8. In the Council's reason for refusal policies in the Sutton Local Plan 2016-2031 dated 2018 (Local Plan) and the London Plan 2021 (London Plan) are referenced. For the avoidance of doubt, I have not decided this appeal on the basis of the duty in s38(6) of the Planning and Compulsory Purchase Act 2004. I have noted the policies, but only insofar as they may generally assist with forming the planning judgment required in relation to the application for prior approval.
9. Both parties refer to previous appeals (APP/T1410/W/20/3263486 dated April 2021 and an unreferenced appeal within the Royal Borough of Kingston Upon Thames dated January 2022) in defining what should be considered when assessing external appearance under Class AA. However, these appeals pre-date recent case law, *CAB Housing Ltd v SSLUHC and Broxbourne BC [2023] EWCA Civ 194*, which concerned determinations pursuant to Class AA of Schedule 2, Part 1 of the GPDO. The court concluded that the control of the external appearance of a dwelling house is not limited to impact on the subject property itself, but also may include impact on neighbouring premises and the locality. I considered this is relevant and have had regard to it in determining the appeal.

Main Issues

10. The main issues are whether, or not, prior approval should be granted having regard to:
 - the external appearance of the building (AA.2(1)(e)); and
 - transport and highways impacts of the development (AA.2 (1)(a)).

Reasons

External appearance

11. Helena House is a six-storey vacant office block located on the east side of the High Street. It is flanked to the north by a two-storey terrace of mixed use units and to the south by a new multi-storey building which is under construction and currently behind a scaffolding cover. Helena House is set back from the front of the terrace and new multi-storey building. Directly opposite the building is Sutton Green, a public park, a single storey retail/café and the junction to Bushey Road. While the surrounding area is predominantly residential with a general two-storey, low rise development mix, there are also a number of multi-storey buildings relatively close by along High Street.
12. The proposal would add two storeys onto the property which would be set back from the existing building's front, rear and side elevations. It would have vertical mullions and metal standing seam cladding to the same proportions as the existing building and be finished in a matt red clay colour.
13. The colour of the proposal would correspond to a degree with the brick end façade of the building and some of the surrounding buildings. However, it would significantly contrast and clash with the lighter and more passive colour combinations that exist to the larger and more dominant principal front elevation. The proposed colour would not soften the scale and mass that the proposal would add but would emphasise its addition on the building. It would make the proposal highly visible from public areas to the front and rear and represent a discordant feature on the building and in the wider street scene.
14. It is appreciated that the contemporary metal cladding and fenestration would largely match the existing building and the proposal's setbacks would make the addition more subservient and less imposing. However, this would not reduce the visual impact and discordant effect the proposed colour would have. Neither would the relatively distant natural colours in Sutton Green and the potential fading of the proposed colour over time assist in reducing this impact. With the proposals elevated height, it would still be very evident from the public areas.
15. For these reasons, the proposal would have an unacceptable and harmful effect on the external appearance of the building (AA.2(1)(e)). Insofar as it is a material consideration, this would be contrary to Policy 28 of the Local Plan and the Policies D4 and D6 of the London Plan. These policies seek, amongst other matters, to ensure development respects local context, responds to local character and is to a good design.
16. The Council has referred to Policy D6 of the London Plan in its decision notice which covers housing quality and standards. Little evidence has been provided by the Council to show its relevance regarding the proposal. The proposal would not be contrary to this policy and as such, I have omitted reference to it.

Transport and highways impacts

17. The proposal would result in the addition of 12 residential units and no additional parking provision would be provided. However, the site is in a high public transport accessibility level area (PTAL 5), and the Highway Authority has confirmed that if the proposal was to be a 'car free' development it would

consider this to be sufficient to mitigate any potential transport and highways impacts. I see no reason to disagree with this proposed mitigation.

18. To meet this requirement, the Council requires a planning obligation be provided. The appellant has agreed to this and a draft section 106 of the Town and Country Planning Act 1990 Unilateral Undertaking (UU) to secure it has been provided. However, the Council has advised that, while the UU would prohibit future occupiers from obtaining residents car parking permits, it would not prohibit future occupants obtaining visitor parking permits. The Council confirm that if a suitably revised and agreed UU was provided which included prohibiting future occupants obtaining visitor parking permits, then this would address its second reason for refusal.
19. However, as the UU provided would not prevent future occupants obtaining visitors parking permits and it is undated and unsigned, then it does not provide the mechanism to ensure that the 'car free' development requirement would be met. No alternative method of securing this requirement has been presented and the proposal therefore fails to demonstrate that it would not result in a harmful effect on the surrounding area's transport and highway systems.
20. For this reason, the proposed development would not satisfy the condition relating to transport and highways impacts of the development (AA.2 (1)(a)). Insofar as it is a material consideration, this would be contrary to Policy 37 of the Local Plan which seeks, amongst other matters, to prevent an increase in on-street parking which can adversely affect traffic flow and highway safety.

Other Matters

21. The existing building is over 18 metres in height. The Council incorrectly refer to the building as being under 18 metres in the Officer's Report and do not consider Paragraph AA.2 (1)(k) and (l) conditions regarding fire risk and safety in any detail. At the application stage, the appellant did provide a London Plan Fire Statement prepared by Accendo Fire Safety Services dated December 2021 which addressed these requirements. While I note the Council has not commented on this statement, as I intend to dismiss the appeal for other reasons, I have not pursued this matter further with the main parties.
22. It is noted that a similar application for the appeal site under Class AA was refused in December 2020 and in response to this pre-application discussions were completed. From this the appellant understood that the proposal was acceptable. However, pre-application discussions are informal and not binding on any future decision the Council may make within the formal planning process. I have therefore determined the appeal on the planning merits of the case.
23. It is advised that the full Officer's Report was not made available for consideration when preparing the appellant's appeal statement even after several requests and this made responding to the reason for refusal difficult. However, the Council has confirmed that the report was available on its website and that the appellant was made aware of this. Furthermore, the full Officer's Report was also made available through the appeal process and sufficient time was allowed for comments. I am therefore satisfied that the appellant had an adequate opportunity to consider and respond to the details contained in the report.

Conclusion

24. For the reasons given above, I conclude that the appeal should be dismissed.

J Symmons

INSPECTOR