The Planning Inspectorate

Appeal Decision

Site visit made on 13 August 2024

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2024

Appeal Ref: APP/M3835/W/24/3337865
Chatsmore House, Goring Street, Worthing, West Sussex, BN12 5AH

- 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 Peppercorn Investments LTD against the decision of Worthing Borough Council.
- The application Ref is NOTICE/0014/23.
- The development proposed is erection of two additional storeys above each existing flat block to create 12 dwellings (6 per flat block).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (Part 20, Class A) (GPDO) permits the construction of new dwellinghouse on detached blocks of flats, specifically the development set out at paragraph A (a) to (d). For development to be permitted by the class it must satisfy the limitations at paragraph A.1 and the conditions at A.2.

3. Proposals falling outside of the development set out at paragraph A or the limitations at A.1 do not benefit from the rights under Part 20, Class A. This is the case irrespective of whether the conditions would be met or not, including in this case the conditions at A.2 requiring developers to apply to the local planning authority for their prior approval in relation to the specified matters.

4. It is not for this appeal to consider whether other permitted development rights might apply that have not been put to me.

Main Issues

5. The main issues are:

   - whether, or not, the proposal accords with the limitations at paragraph A.1 of Part 20, Class A and is therefore capable, in principle, of benefiting from the permitted development rights conferred by Class A.

and, only if it is;

- whether, or not, prior approval should be granted for the proposed development when regard is paid to the specified matters, set out at subparagraphs 'a to j' of A.2(1) of Part 20, Class A.

Reasons

6. The rights at paragraph A(d) of Part 20, Class A permit works for the construction of storage, waste or other ancillary facilities. Ancillary facilities are undefined for the purposes of interpreting Part 20, Class A. As a matter of judgement, I regard the proposed cycle and car parking detailed on the submitted drawings to be ancillary facilities. The proposed parking, along with the waste storage, is therefore capable of benefiting from permitted development rights under paragraph A(d).

7. The A(d) rights are subject to the limitation at paragraph A1(n). Establishing what is to be regarded as a principal elevation is challenging in this case. The main entrances to both appartment blocks are within modest recessed stair cores that each serve three main building elements with elevations that share similar external features, with the main distinguishing factors being balconies on some elevations. As a matter of judgement, it is the elevations with the balconies that I regard to be principal elevations.

8. In the case of the northern most appartment block, the northeast corner of the building facing Goring Street is a side elevation of the building that fronts a highway. As the proposed parking in the northeast corner of the site is forward of the side elevation, the works do not meet the limitation under paragraph A1(n) and cannot therefore benefit from the permitted development rights in A(d) of Part 20, Class A.

9. My view on this issue is not influenced materially by the Technical Guidance: Permitted Development Rights for Householders (2019), as encouraged by the Council. The guidance is only explicitly applicable to Part 1 of Schedule 2, GPDO. Although the principles in the guidance may have read across to other classes, it is not necessary to make such a leap in this case as the issue can be determined without doing so.

10. The submitted drawings include changes to the external elevations of the existing apartment blocks and the addition of solar panels. I see no provision for these elements of the proposal to benefit from the permitted development rights in Part 20, Class A. As they are integral to the proposal, attempting to exclude them via condition would introduce uncertainty as to what was being approved and would not, therefore, be appropriate.

11. The limitation at A1(e) sets out requirements relating to floor to ceiling heights, which are to be measured internally. Notwithstanding the Design and Access Statement indicating that the limitation would be met, I have no section drawings or other appropriate plans demonstrating this. Despite the deficiency, there is enough in the evidence to confirm a reasonable prospect that the limitation would be met. This matter could be clarified and managed by condition, as height is reasonably related to the subject matter of the prior approval (the external appearance of the building).

12. In these circumstances, denying the existence of permitted development rights for the proposal based on this resolvable technicality would be inflexible and not in the public interest. However, as the proposal does not benefit from Part 20, Class A permitted rights for the other reasons set out, this point is academic.

13. For the reasons set out, the proposal would not accord with the limitations at paragraph A.1 of Part 20, Class A and is therefore incapable, in principle, of benefiting from the permitted development rights conferred by Class A based on the evidence provided.

14. In these circumstances, where the proposal does not accord with the fundamental limitations of Part 20, Class A, the question of whether prior approval should be granted becomes irrelevant. As such, addressing the second main issue serves no purpose.

Other matters

15. I have noted the Appellant's comments about the advice received from the Council, including evidence of an email exchange. This does not change my assessment of the proposal against the GPDO. I have no costs claim and any complaint about the Council's handling of the application is a separate matter between the parties.

Conclusion

16. The appeal is dismissed.

D R McCreery

INSPECTOR