Objection to Application for Prior Approval for a proposed enlargement of a dwelling house by construction of additional storeys.

The Town and Country Planning Act 1990 (As Amended)
Schedule 2, Part 1, Class AA

The Town and Country Planning and Country Planning (General Permitted Development) Order 2015

Prior Approval for the enlargement of a dwelling house consisting of the construction of up to two additional storeys, immediately above the topmost storey of the dwelling house, with a maximum height of 12.1 metres, together with any engineering operations reasonably necessary for the purpose of that construction.

Application reference - APP/22/00084

Site Address: 2 Bembridge Drive, Haying Island, Hampshire, PO11 9LU

Representations on behalf of

[redacted]

RTPI
Chartered Town Planner

Andrew Burgess Planning

www.andrewburgessplanning.co.uk

March 2022

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a) the principal elevation of the dwellinghouse and

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ii) Appeal Ref: APP/Y5420/D/21/3268817
20 Franklin Street, London N15 6QH

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2 Lemsford Close, London N15 6BY

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Right Of Light Consulting Chartered Surveyors.
Dated 4 March 2022

[redacted]

1. Introduction

1.1 These representations are submitted on behalf [redacted]

1.2 The representations object to application APP/22/00084 relating to 2 Bembridge Drive, Hayling Island, Hampshire, PO11 9LU for,

Prior Approval for the enlargement of a dwelling house consisting of the construction of up to two additional storeys, immediately above the topmost storey of the dwelling house, with a maximum height of 12.1 metres, together with any engineering operations reasonably necessary for the purpose of that construction.

1.3 The application is for Prior Approval for the enlargement of the dwelling house by construction of additional storeys as permitted development as defined in The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) -Schedule 2, Part 1, Class AA.

1.4. The application for Prior Approval requires certain conditions to be assessed and considered to be acceptable before the proposed development can be considered as Permitted Development. In respect of application APP/22/00084.

The conditions in Schedule 2 Part 1 Class AA.2 (3) are pertinent and state,

"(3) The conditions in this sub-paragraph are as follows-

(a) before beginning the development, the developer must apply to the local planning authority for prior approval as to-

(i) impact on the amenity of any adjoining premises including overlooking, privacy and the loss of light.

(ii) the external appearance of the dwellinghouse, including the design and architectural features of-

(aa) the principal elevation of the dwellinghouse, and

(bb) any side elevation of the dwellinghouse that fronts a highway."

1.5 In a judgment handed down on 3 February 2022 the High Court has ruled against claimants in three cases involving how widely a local authority can consider planning matters when dealing with a request for prior approval under the Town and Country Planning (General Permitted Development) (England) Order 2015.

1.6. These cases involved claims against the London Borough of Haringey and Broxbourne Borough Council. In

Cab Housing Ltd & Ors v Secretary of State for Levelling Up, Housing and Communities & Ors [2022] EWHC 208 (Admin)

Mr Justice Holgate stated that some permitted development rights are dependent upon an application for prior approval, without which rights granted by GDPO 2015 cannot be exercised. A council was not entitled to have regard to all material considerations, when considering prior approval but only those set out in the order.

The judgment is included at Appendix 1 and the Appeal Decisions included at Appendix 2.

1.7 Mr Justice Holgate went onto state Applicants were free to appeal to the Secretary of State when a local authority refuses to grant prior approval or fails to determine an application within the relevant time limit.

1.8 Three applications were made under s.288 of TCPA 1990 to challenge the decisions of Planning Inspectors to dismiss appeals against the refusal of prior approval under Class AA of Part 1 of Schedule 2 to the GPDO, which refers to the enlargement of a single house by up to two storeys, or one storey above a single-storey building.

1.9 Holgate J said,

"These challenges raise important issues regarding the true interpretation of Class AA of Part 1.

First, are the claimants correct in saying that a planning authority's control of impact on amenity [is] limited to effects on properties contiguous with, or abutting, the subject property and are those effects limited to overlooking, privacy and loss of light?

Alternatively, does that control embrace impact upon all aspects of the amenity of neighbouring premises, as the Secretary of State contends?
"Second, is the authority's control of the external appearance of the subject dwelling limited to the 'design and architectural features' of its principal elevation and any side elevation fronting a highway, and is it further limited to the effects of those matters upon the subject dwelling itself?"

1.10 The claimant's said councils were not allowed to consider the impact of external appearance changes on any property outside the subject dwelling. But the Secretary of State contended that the control covers all aspects of the external appearance of the proposed development, and not simply the two elevations specifically referred to, and the

impact upon other premises. The inspectors took this broader approach.

1.11 Holgate J said,

> *"I cannot accept the narrower construction advanced…that the amenity control only concerns those properties which abut, or are contiguous with, the subject property. The normal meaning of the word 'adjoining' includes 'adjacent' or 'neighbouring'."*

1.12 He said the word,

> *'including' in either sub-paragraph (i) or (ii) of paragraph AA.2(3)(a) could not be read as limiting the matters which can be taken into account under 'amenity' or 'external appearance' to those expressly specified."*
>
> *"The word 'including', read in the context of this legislation, does not have an exhaustive effect. Indeed, if the intention had been to limit prior approval controls to the matters specified, the obvious course would have been to say so directly."*

1.13 The judge also rejected the claimants' submissions that the *'external appearance'* control is confined to an assessment of the impact of that appearance on the subject property itself, as opposed to its surroundings.

> "*There is nothing in the language of the GPDO 2015 to justify this construction,"* he said.

1.14 Holgate J concluded,

> *"The decision of each inspector was entirely lawful. That is as far as the court's function permits this judgment to go.*
> *Individual decision-makers will make their own planning judgments applying the prior approval controls, correctly interpreted, to the materials before them."*

1.15 He summarised his findings as:

> Where an application is made for prior approval under Class AA of Part 1 of Schedule 2 to the GPDO 2015, the scale of the development proposed can be controlled within the ambit of paragraph AA.2(3)(a);
>
> i. In paragraph AA.2(3)(a)(i) of Part 1, *'impact on amenity'* is not limited to overlooking, privacy or loss of light. **It means what it says**.
> (My emphasis)

ii. The phrase *'adjoining premises*' in that paragraph includes neighbouring premises and is not limited to premises contiguous with the subject property.

iii. In paragraph AA.2(3)(a)(ii) of Part 1, the *'external appearance'* of the dwelling house is not limited to its principal elevation and any side elevation fronting a highway, or to the design and architectural features of those elevations.

iv. Instead, the prior approval controls for Class AA of Part 1 include the *'external appearance'* of the dwelling house.

v. The control of the external appearance of the dwelling house is not limited to impact on the subject property itself, but also includes impact on neighbouring premises and the locality.

1.16 This is up to date planning case law and the approach set out in the Judgment is the correct approach to assess this type of Prior Approval application.

Appeal Decisions considered in the Judgment

1.17 The three appeal decisions considered in the Judgement are included in Appendix 2 and summarised below. The appeal decisions confirm the approach that a decision maker should take when assessing this type of application.

1.18 **31 Gaywood Avenue, EN8**

The Inspector concluded that the proposed development would have an adverse impact in terms of both the amenity and the external appearance of the dwelling. The Inspector said that the design and external; appearance of the rear elevation was a relevant consideration under paragraph AA.2(3)(a)(ii). He also said that the effect of the proposed additional storey across the width of the new elevation on the "*outlook "*of the occupiers of the neighbouring dwelling, number 29, and whether that effect would be *"overbearing",* were relevant considerations in the assessment of impact on the amenity of adjoining premises under paragraph AA.2(3)(a)(i).

1.19. The Inspector concluded that the proposal would not harm the amenity of adjoining occupiers under AA.2(3)(a)(i) in terms of overlooking, privacy or loss of light.

1.20. The Inspector did however consider that the heightened bulk of the proposal, in combination with the substantial width of the rear elevation (19.3m), would be *"over dominant"* when viewed from the adjacent garden of number 29. A row of 5 sets of obscure glazed windows across the first-floor rear elevation would "*stand out discordantly within*

the residential scene", which "*would draw further attention to the bulk of the proposed and enlarged building and contribute to its visually jarring impact."*

1.21. The Inspector drew together these findings in paragraph 15 and stated,

"*The above adverse impacts would largely be contained to views of the proposed rear elevation from the neighbouring premises, and so would be relatively localised. Nevertheless, given the substantial width of the proposed building mass and its close proximity to No29, the impact would be substantially discordant in terms of both appearance and outlook, viewed from neighbouring premises."*

1.22 These conclusions were based on the requirements of paragraph AA.2(3)(a)(i) and (ii) of Part 1 of Schedule 2 to the GPDO 2015 and formed the reasons for the dismissal of the appeal by the Inspector based on the planning merits.

1.23 **20 Franklin Street, London N15**

This prior approval application was for the addition of a single storey to a two-storey end of terrace dwelling, in a terrace of four houses. The appeal failed solely on the Inspector's assessment of the external appearance of the proposed dwelling as proposed to be enlarged.

1.24 The Inspector rejected the appellants claim that the assessment of the external appearance of the proposal was confined to its effect on the appeal building and stated at paragraph 10 of the appeal decision stating,

"Moreover, whether the external appearance of a dwelling is acceptable is inherently linked to how it would be seen in relation to neighbouring buildings and the wider street-scene or landscape, as it may be. Appearance is not, therefore, 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. I therefore consider that it is reasonable, in the planning judgment under paragraph AA.2(3)(a)(ii) to take account of the effect of the proposed external appearance of the dwelling on the wider character and appearance of the area."

1.25 The Inspector considered at paragraph 12 that the proposed development would appear as a dominant, bulky and incongruous addition, disrupting the otherwise homogeneous character of the terrace. The sudden increase in height would jar with the rest of the terrace.

1.26. At paragraph 13 the Inspector concluded that the proposed development would materially detract from the consistency and balance of the lower-level development within the wider terrace, which is positioned around the three storey blocks of flats to the side and rear. As the blocks were purpose built and of a considerably different appearance, their presence could not be relied upon to justify granting prior approval. On this basis the Inspector came to a planning judgement that the appeal should be dismissed.

1.27. **2 Lemsford Close, London N15**

This appeal related to the refusal of prior approval for the addition of a flat- roofed single storey to the existing two-storey, flat-roofed dwelling. The Inspector considered that the proposal would be acceptable in terms of its impact on the amenity of adjoining premises, which included maintaining a relatively open outlook from within adjoining gardens.

1.28 In respect of paragraph AA.2(3)(a)(ii) at paragraph 3, the Inspector decided that, disregarding any effect on adjoining properties, the proposed second floor extension closely reflected the architectural style of the existing property.

1.29 At paragraph 5 the Inspector concluded that the additional storey would clearly protrude above the adjoining flat roofs, giving the terrace an uneven profile. As a result, it would appear inconsistent with its neighbours. The disruptive effect would be particularly noticeable because of the open aspect of the street scene directly facing parkland. The side elevations would be clearly visible above the adjoining flat roofs.

1.30 In conclusion at paragraphs 6 and 12 stated that the proposed extension would be out of keeping with the external appearance of the appeal building in the context of the adjoining terrace and on this basis dismissed the appeal.

2. Objection to Prior Approval Application for enlargement of a dwellinghouse by construction of additional storeys.

2.1. The first consideration is impact on the amenity of adjoining premises, including overlooking, privacy and the loss of light.

The consideration of the impact on amenity includes adjoining premises and includes neighbouring premises and is not limited to premises contiguous with the subject property.

2.2 The 3D images below demonstrate the impact of the proposal on 4 Bembridge Drive and how overbearing the proposal would be. The windows within the rear elevation look directly into the rear garden of the neighbouring house.



1 3D View 5_2
1 : 1



2 3D View 2_2
1 : 1



3 3D View 3_3
1 : 1



4 3D View 7_1
1 : 1

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Mr Nick Ferguson
2 Bembridge Dve HI
Existing

Site Views 1

Project number	Project Number
Date	Issue Date
Drawn by	Author
Checked by	Checker
Scale	1 : 1

A115

03/02/2022 14:48:09



Looking Southeast towards the site. The additional two storeys would be too tall, over dominant in the street scene and out of character with the area. Photo 1.



Looking Northeast from the footpath leading to the beach towards 2 Bembridge Drive and the flats opposite. The impact of two additional storeys is clear. Photo 2.



Looking East from the footpath to the beach with 4 Bembridge Drive with the dark roof. Photo 3.



Looking North from the beach the impact of two additional storeys would be overbearing and over dominant on 4 Bembridge Drive. Photo 4.



Looking South from Bembridge Drive. The additional two storeys would create a tower with a block appearance out of character with the area. Photo 5.



The view from Flat 10 looking south. The proposed two storeys will be overbearing to the occupiers of Flat 10, result in overlooking, loss of privacy and loss of outlook. Photo 6.

Overlooking

2.3 This proposal which will be four storeys in height will result in overlooking to 4 Bembridge Drive and the flats opposite. The rear garden of 4 Bembridge Drive will suffer severe overlooking from the proposed third and fourth floor with windows looking directly into the garden.

Privacy

2.4 The design of the proposal will result in loss of privacy to the occupiers of 4 Bembridge Drive and will impact unacceptably on the use and enjoyment of their garden. The four storey building would loom over their garden and be an over dominant presence.

Loss of Light

2.5 A thorough report regarding Loss of Light to 4 Bembridge Drive has been prepared by Right of Light Consulting Chartered Surveyors and is included as Appendix 2. The proposal has been assessed by the application of BRE "*Site Layout Planning for Daylight and Sunlight: A guide to good practice."*

2.6 The assessment demonstrates that the ground floor bedroom of 4 Bembridge Drive already enjoys a relatively low level of daylight and sunlight due to the proximity of 2 Bembridge Drive. The skylights to the first and second floors will also be impacted.

2.7 A 25 degree test has been applied and it is clear that the proposed extension does not satisfy the 25 degree test. In summary the light received by the ground floor bedroom, and cloakroom at 4 Bembridge Drive is already obstructed. The two storey side extension will restrict the light further.

2.8 Breaching the 25 degree test signifies that further detailed tests are needed. In these circumstances it is expected that the Council will require the applicant to carry out an assessment in accordance with the BRE guide. The assessment should include the following tests:

- Vertical Sky Component
- Daylight Distribution
- Annual Probable Sunlight Hours
- Overshadowing to Gardens and Open Spaces
- Sun path diagrams/shadow plots

It should also be noted that the first-floor bedroom at 4 Bembridge Drive is reliant on light it receives from the skylight window serving the room.



The existing view from the first floor lounge will be blocked by the proposal resulting in substantial loss of light and the outlook will be reduced to a solid brick wall. Photo 7



The current view from the second floor bedroom currently the outlook is the sky but would change to a solid brick wall resulting in loss of light and a poor outlook. Photo 8

2.9 The report concludes that no decision is made in favour of the application until,

1) The applicant has submitted a complete and accurate daylight and sunlight assessment prepared in accordance with the BRE guide; and

2) The assessment shows the proposed design; or amended design, complies with the BRE guide.

2.10 It should however be noted that the application is deficient in respect of providing a report on loss of light. Indeed, it is fundamentally flawed due to the absence of such a report and should be refused for this reason alone.

2.11 The second consideration relates to the external appearance of the dwellinghouse, including the design and architectural features of,

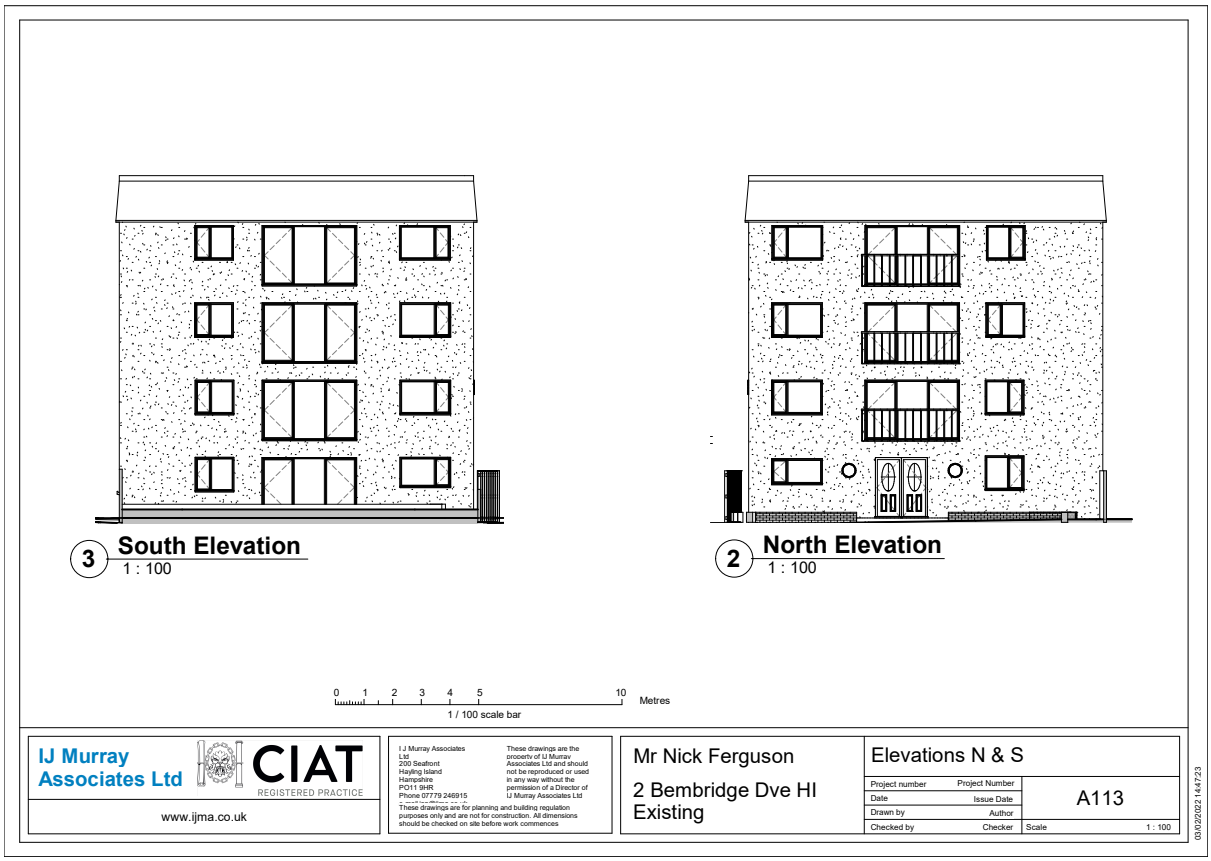
i) The principal elevation of the dwellinghouse, and

ii) Any side elevation of the dwellinghouse that fronts a highway.

The recent High Court judgment broadens this consideration to impact on neighbouring premises and the locality.

2.12 **The principal elevation of the dwellinghouse**

The principal elevation of the dwellinghouse with the additional two storeys is not a thing of beauty as can be seen from the proposed elevations below.



The proposed design is brutal and extremely unattractive and resembles a design style from the former Soviet Union. This is poor design and conflicts with guidance in the National Planning Policy Framework (NPPF) also referred to as *"the Framework"*.

2.13 The proposal would be unattractive when viewed from neighbouring properties, the street, the beach, and immediate locality. The poor quality design does not contribute to improving the appearance of the area and will be detrimental to the character and appearance of the area due to its bland and utilitarian design. These comments apply equally to the rear elevation which will be viewed from the beach.

Density

2.14 The density of the proposed building is out of character and too dense compared to neighbouring dwellings. The plot measures approximately 588 sq. m (0.00588 Hectares) and each floor covers an area of 144 sq. m resulting in a total floor space area of 576 sq. m within the four storeys. This is

a Plot Ratio of 1.02: 1 and indicates that the proposal Is out of place in this location.

Conflict with National and Local Planning Policy

2.15 The design of the proposal conflicts with paragraph 130 which states,

130. Planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit; "

2.16 Paragraph 134 goes on to state,

"

134. Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design[52], taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to:

1. *a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or*
2. *b) outstanding or innovative designs which promote high levels of sustainability or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.*

[52] *Contained in the National Design Guide and National Model Design Code. "*

2.14 The proposal is also in conflict with the policies in the Havant Borough Core Strategy March 2011 and in particular Policy CS 16,

Policy CS16 High Quality Design

Planning permission will be granted for development that is designed to a high standard, which helps to create places where people want to live, work and relax. All development should demonstrate that its design:

1. Responds to, draws inspiration from and respects local context and:

a) Identifies and responds positively to existing features of natural, historic or local character within or close to the proposed development site;

b) Integrates with existing local landscape features, promotes wildlife and biodiversity and/or applies characteristics of the local area into the design of a scheme wherever possible to create variety and interest;

c) Uses the characteristics of the locality to help inform the design of the new development including heights, massing, existing buildings lines, plot widths and depths, materials and proportions of windows and doors.

d) Is well connected to and integrates with the immediate local area and the wider area by linking to existing pedestrian and cycle routes and encouraging people to use public transport where possible; and

e) The development does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking.

2.15 The proposal also conflicts with the Havant Borough Council Borough Design Guide Supplementary Planning Document December 2011.

2.16 The proposed additional two storeys are not well designed and conflict with National Planning Guidance in the NPPF. The proposal also conflicts with Local Planning Policy, in particular Policy CS 16 of the Havant Borough Core Strategy March 2011 and the Supplementary Planning Document Havant Borough Council Borough Design Guide December 2011 which is a material consideration. These policy objections support refusal of the application.

3.0 Summary and Conclusions

3.1 The proposal for two additional storeys to be added to 2 Bembridge Drive conflicts with the conditions that must be assessed in paragraph AA.2 of Part 1 of Schedule 2 to the GPDO 2015.

3.2 The proposal will result in unacceptable impact on the amenity of adjoining premises which in case law includes neighbouring premises and the locality generally. There will be unacceptable overlooking, loss of privacy and loss of light which will cause serious harm to the occupiers of neighbouring properties.

3.3 The proposed external appearance of the building with two additional storeys is poor design and results in an unattractive building out of character with the area. The bland and utilitarian design of the building fails the tests in the NPPF regarding well designed developments. In accordance with the NPPF advice poorly designed proposals should be refused.

3.4 It is clear from the floorplans that ultimately this application is an attempt to ultimately establish eight apartments, as the internal staircase would allow self contained flats to be established. This is planning by stealth, and it appears that the application is attempting to establish a fallback position where approval of this application would be used to justify a planning application to create four flats.

3.5 The application fails the Prior Approval test of the conditions set out in the GPDO and explained above.

The proposal will therefore be harmful to,

i. the amenity of surrounding premises.
ii. the character of the area and street scene due a poorly designed building.

3.6. The application should be refused as there are significant and substantial material planning objections to the application. The adverse impact of the proposal significantly and demonstrably outweighs any benefits.

It is respectfully requested that the application is refused for the reasons set out above.

APPENDIX 1

HIGH COURT JUDGMENT

CAB HOUSING LIMITED

Case No:
CO/2763/2021
CO/3135/2021
CO/3921/2021

APPENDIX 2

APPEAL DECISIONS

i) Appeal Ref: APP/W1905/W/20/3265298
31 Gaywood Avenue, London EN8 8QE

ii) Appeal Ref: APP/Y5420/D/21/3268817
20 Franklin Street, London N15 6QH

iii) Appeal Ref: APP/Y5420/D/21/3277589
2 Lemsford Close, London N15 6BY

APPENDIX 3

OBJECTION LETTER FROM RIGHTS OF LIGHT CONSULTING
3 MARCH 2022

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England and Wales High Court (Administrative Court) Decisions

You are here: BAILII >> Databases >> England and Wales High Court (Administrative Court) Decisions >> Cab Housing Ltd & Ors v Secretary of State for Levelling Up, Housing and Communities & Ors [2022] EWHC 208 (Admin) (03 February 2022)
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Neutral Citation Number: [2022] EWHC 208 (Admin)
Case No: CO/2763/2021
CO/3135/2021
CO/3921/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL
03/02/2022

B e f o r e :

THE HON. MR JUSTICE HOLGATE

Between:

CAB HOUSING LIMITED	**Case No: CO/2763/2021** **Claimant**
- and –	
(1) THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES **(2) LONDON BOROUGH OF BROXBOURNE**	**Defendants**
And Between :	
BEIS NOEH LIMITED	**Case No: CO/3135/2021** **Claimant**
- and –	
(1) THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES **(2) LONDON BOROUGH OF HARINGEY**	**Defendants**
And Between :	
MATI ROTENBE	**Case No: CO/3921/2021** **Claimant**
- and –	
(1) THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES **(2) LONDON BOROUGH OF HARINGEY**	**Defendants**

Charles Streeten (instructed through Direct Public Access) for the Claimants
Thea Osmund-Smith (instructed by Government Legal Department) for the First Defendant
The Second Defendants in each case did not appear and were not represented.
Hearing date: 18 January 2022

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Mr. Justice Holgate:

Introduction

1. The Town and Country Planning (General Permitted Development) (England) Order 2015 – SI 2015 No. 596 ("GPDO 2015") grants planning permission for the Classes of permitted development set out in Schedule 2. Where a landowner is entitled to rely upon such rights, he does not need to make an

application for a grant of planning permission to the local planning authority ("LPA") under s.62 of the Town and Country Planning Act 1990 ("TCPA 1990"). However, some permitted development rights are dependent upon an application being made to a LPA for the "prior approval" of a specific proposal. Without that approval, the rights granted by GDPO 2015 cannot be exercised. If a proposal is approved, the development rights granted by the order can only be exercised in accordance with the details approved by the LPA.

2. An application for prior approval is not the same as an application for planning permission. The authority is not entitled to have regard to all material considerations, as is the case of an application for planning permission (contrast s.70(2) of TCPA 1990). The GDPO 2015 specifies those planning matters for which approval must be sought and obtained and hence the details which the landowner must submit in his application. Those specified matters delimit the controls which the LPA is able to exercise and the considerations it is entitled to take into account, when determining an application for prior approval.

3. Where an LPA refuses to grant prior approval, or fails to determine an application within the relevant time limit, the applicant may appeal to the Secretary of State, the defendant. These three applications under s.288 of TCPA 1990 challenge the decisions of three Planning Inspectors to dismiss appeals against the refusal of prior approval under Class AA of Part 1 of Schedule 2 to the GPDO. That Class provides for the enlargement of a single dwelling house by the upwards addition of up to two storeys, or one storey above a single-storey building.

4. Paragraph AA.2 of Part 1 of Schedule 2 to the GPDO 2015 sets out the conditions subject to which the permitted development right in Class AA and paragraph AA.1 is granted. The enlarged dwellinghouse must be used as a single dwelling (see the condition in AA.2(2)(d)).

5. Paragraph AA.2(3) sets out the matters for which prior approval must be obtained:-

> "(3) The conditions in this sub-paragraph are as follows –
>
> (a) before beginning the development, the developer must apply to the local planning authority for prior approval as to –
>
> (i) impact on the amenity of any adjoining premises including overlooking, privacy and the loss of light;
>
> (ii) the external appearance of the dwelling house, including the design and architectural features of –
>
> (aa) the principal elevation of the dwelling house, and
>
> (bb) any side elevation of the dwelling house that fronts a highway;
>
> (iii) air traffic and defence asset impacts of the development; and
>
> (iv) whether, as a result of the siting of the dwelling house, the development will impact on a protected view identified in the Directions Relating to Protected Vistas dated 15th March 2012 issued by the Secretary of State."

6. These challenges raise important issues regarding the true interpretation of Class AA of Part 1. First, are the claimants correct in saying that a planning authority's control of impact on amenity limited to effects on properties contiguous with, or abutting, the subject property and are those effects limited to overlooking, privacy and loss of light? Alternatively, does that control embrace impact upon all aspects of the amenity of neighbouring premises, as the Secretary of State contends? Second, is the authority's control of the external appearance of the subject dwelling limited to the "design and architectural features" of its principal elevation and any side elevation fronting a highway, and is it further limited to the effects of those matters upon the subject dwelling itself? The claimants contend for that interpretation and they say that the authority is not allowed to consider the effects of external appearance upon any property outside the subject dwelling. Alternatively, is the correct interpretation, as the Secretary of State contends, that the control covers (1) all aspects of the external appearance of the proposed development, and not simply the two elevations specifically referred to in AA.2(3)(a)(ii)) and (2) impact upon other premises, and not simply the subject dwelling itself?

7. In the decisions challenged in these proceedings, the Inspectors took the broader approach in relation to external appearance and, in two cases, to amenity. It is common ground that if the claimants' construction of the GPDO 2015 is correct, then each of the decisions must be quashed as *ultra vires*. The decisions would have been taken outside the ambit of the powers exercisable by the Inspector. But, if the defendant's interpretation is correct, then it is also common ground that each of the three Inspectors reached decisions which fell within their powers, their decisions are not otherwise open to legal challenge and the applications for statutory review must be dismissed.

8. The claimants point out that other Inspectors have taken a different view upon the scope of the controls exercisable in the determination of an application for prior approval under Class AA of Part 1. It has been said that the decision-maker is not allowed to assess the impact of the external appearance of a proposed addition of 1 or 2 storeys on any area outside the subject building, for example, the streetscape. It has also been said that the principle of an upwards extension of up to 2 storeys is "established" by the permitted development right itself, so that the decision on the application for prior approval should not frustrate, or resile from, that principle. Such statements have even been made in relation to other permitted development rights where the GPDO 2015 requires "external appearance" to be controlled, without going on to refer to specific elevations (see e.g. the decision letter dated 6 July 2021 on Kings Gate, 111, The Drive, Hove). If the Secretary of State's interpretation of the GPDO 2015 is correct, then all these decisions were potentially liable to be quashed on an application under s.288 brought within time. Plainly there are differences of interpretation which need to be resolved. There is also the question: to what extent is it correct to say that the principle of development is established where a permitted development right is subject to prior approval?

9. The issues in this case also affect the proper construction and ambit of permitted development rights granted by GPDO 2015 under Classes ZA, A, AA, AB, AC and AD of Part 20. These provide for up to two storeys of multiple units of residential units to be erected on top of an existing purpose-built block of flats, or on top of detached or terraced buildings in commercial or mixed use or residential use.

10. The claimants' narrower approach to the legal scope of prior approval in these Classes also has implications for non-residential permitted development rights. For example, the right to erect or extend an agricultural building under Class A of Part 6 of Schedule 2 to the GDPO 2015 is potentially subject to control by prior approval in respect of the "external appearance" of the building proposed. If, as some decision-makers have said, that control is limited to assessing the effects of that appearance on the building itself, then it would follow, for example, that the effects of that external appearance on the setting of a listed building nearby could not be controlled. Can this really be right?

11. The remainder of this judgment is set out under the following headings:

    - A summary of the decision letters
    - The statutory framework
    - A summary of the claimants' submissions
    - Principles of statutory interpretation
    - Discussion.

12. I am grateful for the considerable assistance I have received from Counsel in their written and oral submissions.

A Summary of the Decision Letters

31 Gaywood Avenue. London N8

13. The challenge brought by Cab Housing Limited relates to the decision letter dated 15 June 2021 dismissing its appeal against the refusal of prior approval for the addition of a single storey to the existing single storey dwelling.

14. The Inspector concluded that the proposed development would have an adverse impact in terms of both the amenity of adjoining premises and the external appearance of the dwelling (i.e. paragraph AA.2(3)(a)(i) and (ii)).

15. The appeal property is a detached bungalow within a cluster of bungalows towards the end of a cul-de-sac. There are two-storey terraced dwellings to the south and east of the appeal site, semi-detached two-storey dwellings to the west, and rows of bungalows to the south and south-east. The area has a mixed suburban residential character with some variety of building form, size and style (DL8). Viewed from the front and side of the building, the proposed enlarged dwelling would be assimilated into that character. (DL10).

16. But the front and rear elevations are relatively wide at 19.3m (DL9 and DL14). The garden areas of number 31 are concentrated to its front and sides. A plan shows that number 31 is set at right angles to its neighbour, number 29, and there is only a narrow strip separating the rear elevation of number 31 from the side boundary and garden of number 29, along which that rear elevation would run (DL9).

17. The Inspector said that the design and external appearance of the rear elevation was a relevant consideration under paragraph AA.2(3)(a)(ii) (see DL6). He also said that the effect of the proposed additional storey across the width of the new elevation on the *outlook* of the occupiers of number 29, and whether that effect would be "overbearing", were relevant considerations in the assessment of impact on the amenity of adjoining premises under paragraph AA.2(3)(a)(i) (DL7).

18. The Inspector concluded that the proposal would not harm the amenity of adjoining occupiers under AA.2(3)(a)(i) in terms of overlooking, privacy or loss of light (DL11 to DL13).

19. However, he judged that the heightened bulk of the proposal, in combination with the substantial width of its rear elevation (19.3m), would appear "over dominant" when viewed from the adjacent garden of number 29 (DL14). Moreover, the extent of the row of 5 sets of obscure glazed windows across the first floor rear elevation would "stand out discordantly within the residential suburban scene", which "would draw further attention to the bulk of the proposed and enlarged building, and contribute to its visually jarring impact" (DL14). The Inspector drew together these findings in DL15:

> "The above adverse impacts would largely be contained to views of the proposed rear elevation from neighbouring premises, and so would be relatively localised. Nevertheless, given the substantial width of the proposed building mass and its close proximity to No29, the impact would be substantially discordant in terms of both appearance and outlook, viewed from neighbouring premises".

Those conclusions went to paragraph AA.2(3)(a)(i) and (ii) of Part 1 of Schedule 2 to the GPDO 2015 and formed the reasons for the dismissal of the appeal. Perfectly properly, the claimant makes no attempt to challenge in this court the Inspector's conclusion on the planning merits, which were a matter for him.

20 Franklin Street, London N15

20. The challenge brought by Beis Noeh Limited relates to the decision letter dated 8 September 2021, dismissing its appeal against the refusal of prior approval for the addition of a single storey to a two storey end of terrace dwelling, in a terrace of four houses. In this case the appeal failed solely on the Inspector's assessment of the external appearance of the subject dwelling as proposed to be enlarged (paragraph AA.2(3)(a)(ii)).

21. The Inspector noted that Franklin Street also contains single-storey detached dwellings. Three storey purpose-built blocks of flats lie to the side and rear of the appeal site (DL8).

22. The Inspector rejected the claimant's contention that the assessment of the external appearance of the proposal was confined to its effect on the appeal building, stating at DL10:

> "Moreover, whether the external appearance of a dwelling is acceptable is inherently linked to how it would be seen in relation to neighbouring buildings and the wider street-scene or landscape, as it may be. Appearance is not, therefore, 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. I therefore consider that it is reasonable, in the planning judgment under paragraph AA.2(3)(a)(ii) to take account of the effect of the proposed external appearance of the dwelling on the wider character and appearance of the area."

23. The Inspector judged that the proposed development would, particularly when seen from Franklin Street and one other road, appear as a dominant, bulky and incongruous addition, disrupting the otherwise homogeneous character of the terrace. The sudden increase in height would jar with the rest of the terrace (DL12).

24. He concluded that the proposed development would materially detract from the consistency and balance of the lower level development within the wider terrace, which is positioned around the three storey blocks of flats to the side and rear. Because these blocks were purpose-built and of a considerably different appearance, their presence could not be relied upon to justify granting prior approval (DL13). Once again, those planning judgments were for the Inspector, not the Court.

2 Lemsford Close, London N15

25. The challenge brought by Ms Rotenberg relates to the decision letter dated 10 November 2021 dismissing an appeal against the refusal of prior approval for the addition of a flat-roofed single storey to the existing two-storey, flat-roofed dwelling.

26. The Inspector decided that the proposal would be acceptable in terms of its impact on the amenity of adjoining premises, which included the maintenance of a relatively open outlook from within adjoining gardens (paragraph AA.2(3)(a)(i) of Part 1 of Schedule to the GPDO 2015 and DL9-11).

27. As regards paragraph AA.2(3)(a)(ii), the Inspector decided that, disregarding any effect on adjoining properties, the proposed second floor extension closely reflected the architectural style of the existing property and accorded "with the design of the host property" (DL3).

28. The appeal property is one of eight terraced houses. The Inspector found that they all share the same two storey design; the streetscene in this part of Lemsford Close displays a high degree of architectural consistency; and nearby taller buildings are of a different design and visually distinct from the terrace in which the appeal building is situated. (DL4).

29. The Inspector concluded that the additional storey on the appeal building would clearly protrude above the adjoining flat roofs, giving the terrace an uneven profile. The appeal property would appear inconsistent with its neighbours. This disruptive effect would be particularly noticeable because of the

open aspect of the streetscene directly facing parkland. The side elevations would be clearly visible above the adjoining flat roofs (DL5). The proposed extension would be out of keeping with the external appearance of the appeal property in the context of the adjoining terrace (DL6 and DL12).

The statutory framework

30. The statutory framework has been set out in some detail by the Divisional Court in *R (Rights: Community: Action) v Secretary of State for Housing and Local Government* [2021] PTSR 553 at [19] to [43] and [46] to [61]. There is no need for that analysis to be repeated in this judgment. Neither party raised any issue concerning those passages. But they need to be read together with the further elucidation provided by the Court of Appeal in the same case ([2021] EWCA Civ 1954 (see below).

31. The grant of the permitted development right in Class AA of Part 1 comes about through article 3(1) of the GPDO 2015 and the description of that right in Class AA read together with the exclusions in paragraph AA.1 (*Keenan v Woking Borough Council* [2018] PTSR 697 at [33] et seq. and *R (Rights: Community: Action)* [2021] EWCA Civ 1954 at [27]). Prior approval is not a free-standing development consent. It is one element of the consent for the development. The grant of planning permission by the GPDO 2015 and the grant of prior approval together comprise that development consent. The prior approval procedure is embedded in the consent granted by the Order; it forms an inextricable part, or a "necessary component" of the permitted development right. A developer's ability to implement that permission remains latent until prior approval is granted for a specific proposal on a specific site [64] and ([68]). Accordingly, in a prior approval case, planning permission accrues or crystallises upon the grant of that approval, not before [28]).

32. Class AA of Part 1 to Schedule 2 to the GPDO 2015 is set out in the Annex to this judgment.

33. The permitted development defined by Class AA is for the enlargement of a dwelling-house by constructing up to two additional storeys where the existing property consists of two or more storeys, or one additional storey where the existing property has only one storey, immediately above the current uppermost storey. The right also includes any engineering operations reasonably necessary for that construction.

34. But paragraph AA.1 excludes certain forms of development from the right, notably:

    (i) Land falling within Article 2(3) and Schedule 1 to the GPDO 2015 (e.g. National Parks, areas of outstanding natural beauty, conservation areas, etc.) and any site of special scientific interest;

    (ii) A dwelling-house built before 1 July 1998 or after 28 October 2018;

    (iii) A dwelling-house which has already been enlarged upwards by one or more storeys since it was originally built (Article 2(1));

    (iv) Development where the height of the highest part of the roof would exceed 18m above ground level (Article 2(2)), or would exceed the highest part of the roof of the existing dwelling by more than 3.5m for a single storey dwelling or 7m for a dwelling with two or more storeys;

    (v) Development where the highest part of the roof would, in the case of a semi-detached house, exceed by more than 3.5m the highest part of the roof of the building having a shared party wall or an adjoining main wall or, in the case of a terraced house, the highest part of the roof of every other building in the terrace;

    (vi) Any storey constructed other than on the "principal part" of the dwelling (see para.AA.4(i));

    Paragraph AA.1 also excludes an upwards extension where "visible support structures" would be provided on the exterior of the dwelling when the works are completed.

35. The right in Class AA is subject to the conditions in paragraph AA.2. So, for example, the external materials must be similar in appearance to those used in the exterior of the existing dwelling, side elevations must not include any window, and the roof pitch of the principal part of the dwelling as enlarged must be the same as that of the existing dwelling (paragraph AA.2(2)). Paragraph AA.2(3)(a) sets out the matters for which prior approval must be obtained (see [5] above).

36. Paragraph AA.3 deals with applications for prior approval. Sub-paragraph (11) prohibits the carrying out of any development before prior approval is obtained. Sub-paragraph (12) requires the development authorised by Class AA to be carried out in accordance with "the details approved" by the LPA, referring back to the application described in paragraph AA.3(1) and (2).

37. Under paragraph AA.3(2) the application must describe the details of the proposed works and provide plans showing "the proposed development", and "the existing and proposed elevations of the dwelling-house" and the position and size of windows.

38. The LPA may refuse an application if they consider that the proposal does not comply with paragraph AA.1 and AA.2, or if they consider that the developer has provided insufficient information to enable them to determine that question (paragraph AA.3(3)). If the authority does not refuse the application on that basis, then it must notify "each adjoining owner or occupier" about the proposed development (para. AA.3(5)) and must take any representations they make into account (para. AA.3(12)). Where the application relates to prior approval of impact on air traffic or defence assets or impact on "protected views" (see AA.2(3)(a)(iii) and (iv)), the LPA must consult with certain specified consultees, such as the Secretary of State for Defence and Historic England (para AA.3(6) to (10)).

39. By paragraph AA.3(11), the LPA may require the developer to submit information to enable it to determine the application, including assessments of impacts and risks and statements as to how they are to be mitigated, having regard to the National Planning Policy Framework ("NPPF").

40. When determining the application, the LPA is obliged to have regard to the NPPF so far as relevant "to the subject matter of the prior approval" (para.AA.3(12)(b)).

41. The issues in this case regarding the true construction of the prior approval controls on external appearance and impact on amenity need to be seen in the context of similar permitted development rights in Part 20 of Schedule 2 to GPDO 2015. In summary, those rights are:

    Class ZA

    Permission is granted for the demolition of a purpose-built block of flats or a detached building within the B1 Use Class (use for offices, light industry or research and development) and its replacement by a single purpose-built block of flats or a detached dwelling-house.

    Class A

    Permission is granted for the construction of up to two additional storeys of new dwellings immediately above the highest storey of a detached, purpose-built block of flats.

    Class AA

Permission is granted for the construction of up to two additional storeys of new dwellings immediately above the highest storey of a detached building in commercial or mixed use (i.e. Use Classes A1, A2 or A3 or offices, or a mixture of those uses with or without dwellings).

Class AB

Permission is granted for the construction of new dwellings as a single additional storey above an existing single-storey building, or up to two additional storeys above a building with two or more storeys, where that existing building is terraced and in commercial or mixed use (as defined in Class AA of Part 20).

Class AC

Permission is granted for the same new development as in Class AB, but above a terraced building in use as a single dwelling.

Class AD

Permission is granted for the same new development as in Class AB, but above a single detached dwelling.

42. These seven Classes of permitted development rights were introduced within a short period of time. First, Class A of Part 20 was introduced by SI 2020 No. 632 which was made on 23 June 2020 and came into force on 1 August 2020. Second, Class AA of Part 1 and Classes AA, AB, AC and AD of Part 20 were introduced by SI 2020 No. 755, which was made on 20 July 2020 and came into force at 9am on 31 August 2020. Third, Class ZA was introduced by SI 2020 No. 756, which was made on 20 July 2020 and come into force at 10am on 31 August 2020.

43. The structure of these permitted development rights is similar to Class AA of Part 1 of Schedule 2 to the GPDO 2015. They each describe the permitted development right as a Class which is subject to exclusions. The following paragraph sets out conditions subject to which the permission is granted. Those conditions include a requirement to apply for and obtain prior approval for specified matters before development may lawfully be commenced and a further requirement that the development be carried out in accordance with those details approved by the LPA (para. B(16) and (17)). The procedural provisions governing prior approval in paragraph B of Part 20 serve very similar functions to paragraph AA.3 of Part 1.

44. The prior approval controls for the six Classes summarised in [41] include additional matters appropriate for the more substantial forms of development involved. For example, prior approval is required in relation to transport and highways impacts, flooding risks, and the provision of adequate natural light in all habitable room of the new dwellings to be created. But the four matters needing prior approval in the case of Class AA of Part 1 (see paragraph AA.2(3)(a)) also have to be approved under each of those six Classes.

45. The control of impact on amenity is essentially the same as that applied in Class AA of Part 1. As I explain below, the use of the phrase "neighbouring premises" in those six Classes does not have a different meaning to "adjoining premises" in Class AA of Part 1.

46. There are, however, two different drafting styles when it comes to the control of external appearance. Like Class AA of Part 1, the control in Classes AA, AB, AC and AD of Part 20 relates to the external appearance of the building "including (i) the design and architectural features of – (aa) the principal elevation; and (bb) any side elevation that fronts a highway". The fact that these controls refer to the external appearance of a "building" rather than a "dwelling-house" (as in Class AA of Part 1) is of no significance for the issues in this case. These terms simply refer to the structure which is being enlarged by the addition of one or two storeys.

47. But in the case of two Classes of permitted development, Classes ZA and A of Part 20, the control simply refers to the "external appearance" of the new building or the building, without any further text which includes the design and architectural features of the principal elevation and any side elevation fronting a highway. The question is whether the ambit of these two formulations, read properly in context, should be construed differently, one covering external appearance in general and the other limited to those matters which are expressly stated to be "included".

48. There is one difference between the drafting of the external appearance controls for Class AA of Part 1 compared to Classes AA to AD of Part 20. The latter (along with Class A of Part 20) allow the creation of multiple additional dwelling houses and so the permitted development rights include works for the construction of (a) access to those units, including fire escapes via external staircases and (b) storage, waste or other ancillary facilities to support the new dwelling-houses. In Classes AA to AD of Part 20 the requirement to obtain prior approval of external appearance includes the "impacts" of those works. Plainly in some cases such works may not be located on a principal elevation, or on a side elevation fronting a highway or public streetscene.

A summary of the submissions

49. Mr. Streeten for the claimants refers to Government announcements and a public consultation exercise in order to identify the objectives of these additional permitted development rights introduced in 2020.

50. In October 2018 the Ministry published a consultation paper "Planning Reform: Supporting the high street and increasing the delivery of new homes". Paragraph 1.1 referred to the use of permitted development rights to contribute to the supply of new homes. Paragraph 1.2 relied on such rights as providing "a more streamlined planning process with greater planning certainty while at the same time allowing for local consideration of key planning matters". Paragraph 1.5 stated that views were sought on a new permitted development right for making use of airspace above existing buildings to create new homes "which fit within the existing streetscape".

51. The proposals were described in further detail in paragraph 1.13 to 1.29 of the document. This section made it clear that the aim was not only to increase the size of the housing stock, but also to increase the supply of larger homes, the latter being relevant to Class AA of Part 1.

52. Both Counsel relied upon paragraph 1.26 of the consultation document which states:

> "Prior approval would consider the design, siting and appearance of the upward extension and its impact on the amenity and character of the area, taking account of the form of neighbouring properties. This may include considering whether the proposed development is of good design, adds to the overall quality of the area over its lifetime, is visually attractive as a result of good architecture, responds to the local character and history of the area and maintains a strong sense of place, as set out in paragraph 127 of the National Planning Policy Framework. We expect prior approval on design to be granted where the design is in keeping with the existing design of the building"

53. Mr. Streeten emphasised the last sentence in support of his contention that the effect of the external appearance of a proposal should be confined under paragraph AA.2(3)(a)(ii) to the building itself. However, Ms. Osmund-Smith for the defendant said that the paragraph, read as a whole, is concerned with broader considerations. Prior approval could involve considering whether a proposed development is of good design, adds to the overall quality of the area, is visually attractive, responds to the local character of the area and maintains a strong sense of place, relying upon paragraph 127 of the version of the NPPF then current.

54. The corresponding policy in paragraph 130 of the current NPPF states:

> "Planning policies and decisions should ensure that development:

(a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

(b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

(c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

(d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

(e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

(f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience "

55. Ms. Osmund-Smith also drew attention to paragraph 120(e) of the NPPF:

"Planning policies and decisions should:

…….

(e) support opportunities to use the airspace above existing residential and commercial premises for new homes. In particular, they should allow upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well-designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers".

56. The Government's response on the consultation exercise was published in May 2019. Paragraph 35 stated (inter alia):

"…… As set out in the Planning Update Written Statement we intend to take forward a permitted development right to extend upwards certain existing buildings in commercial and residential use to deliver additional homes. We want a right to respect the design of the existing streetscape, while ensuring the amenity of existing neighbours is considered. The review of permitted development rights for change of use of buildings to residential use in respect of the quality standard of homes delivered announced in the Written Statement will inform this work. We recognise the complexity of designing a permitted development right to build upwards and will continue to engage with interest parties on the technical details"

Ms. Osmund-Smith emphasises the references in that passage to respect for the design of the existing streetscape and the "amenity of existing neighbours".

57. Of course, the intention of the legislature in creating Class AA of Part 1 is to be ascertained from the language used in the legislation itself, read properly in context and as a whole. Mr. Streeten submits that the height, width and mass of an extension under Class AA of Part 1 are prescribed by the Order and "cannot in and of themselves result in the refusal of prior approval", when considering either external appearance or impact on amenity. He submits that there can be no rowing back on that matter of principle which, he suggests, is analogous to the consideration of reserved matters relating to an outline planning permission (citing on the latter point *Paul Newman New Homes Limited v Secretary of State for Housing, Communities and Local Government* [2021] PTSR 1054 at [17]).

58. In this respect, Mr. Streeten submits that Class AA of Part 1 establishes as a matter of principle "scale", which is to be distinguished from "appearance". He says that in Class AA these two concepts are treated as mutually exclusive. But he seeks to advance this argument, not by an analysis of the language used in the GPDO 2015, but by relying upon the definitions of "scale" and "appearance" forming part of the code in the Town and Country Planning (Development Management Procedure) (England) Order 2015 – SI 2015 No 595 ("DMPO 2015") for outline planning permissions and reserved matters. In that context he also prays in aid the decision of Simon J (as he then was) in *MMF (UK) Limited v Secretary of State for Communities and Local Government* [2010] EWHC 3686 (Admin) at [11]:

"Scale and Appearance (as defined) are concerned with two different aspects of a building. As Mr. Cannock submitted, at the most simple analysis, if one considers a building as a simple three-dimensional shape, a box, the size of the box and importantly its relationship with other buildings, is a question of Scale. How the box is designed within that overall shape is its Appearance. That too may involve a consideration of its relationship with other buildings, but if so, it is applying a different criterion to one of Scale".

In *Crystal Property (London) Limited v Secretary of State for Communities and Local Government* [2016] EWCA Civ 1265 the Court of Appeal approved the part of that passage which deals with the meaning of "scale" as a reserved matter.

59. Mr. Streeten relies upon certain canons of construction, to which it is convenient to refer by their Latin labels. First, he relies primarily upon the principle that to express one thing is exclude another – *expressio unius est exclusio alterius* (see *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edition) at Section 23.12). He submits that because the draftsman has expressly referred to certain specific matters, namely overlooking, privacy and loss of light in the case of impact on amenity and the specified elevations in the case of external appearance, any other aspects which would otherwise fall within amenity or external appearance are excluded. He cites *Dilworth v The Commissioner of Stamps* [1894] AC 94 at 105-6 for the proposition that a definition may "include" certain terms in order to confine that definition to those terms rather than to enlarge it.

60. Mr. Streeten submits that the express references to specified matters in paragraph AA.2(3)(a)(i) and (ii) do not serve to extend the natural meaning of "external appearance" and "impact on amenity". Their natural meaning is sufficiently broad to cover those matters without needing to "include" them within those terms. He then says that it follows that if those matters are not treated as exhaustive of the meanings of "external appearance" and "impact on amenity", the express references to them are superfluous.

61. Mr. Streeten seeks to reinforce his submission by referring to Classes ZA and A of Part 20 which impose controls in relation to amenity and external appearance without any additional wording. He suggests that the difference in drafting is deliberate, so that the ambit of "external appearance" and "impact on amenity" in Class AA of Part 1 is limited to the specific matters said to be "included" in those controls. But Mr. Streeten accepts that the construction for which he extends would also have to be appropriate for Classes AA to AD of Part 20.

62. Mr. Streeten also relies on the *ejusdem generis* principle ("of the same kind"). He submits that "amenity" in paragraph AA.2(3)(a)(i) is limited to a genus solely concerned with the living conditions of private individuals and that paragraph AA.2(3)(a)(ii) is limited to a genus solely concerned with the appearance of public, as opposed to private, facing elevations.

Principles of statutory interpretation

63. In *R (Mawbey) v Lewisham London Borough Council* [2020] PTSR 164 Lindblom LJ held at [20] that common words used in a permitted development right are to be given their common meaning, unless there is something in the legislative context to displace that meaning; the ordinary meaning of the language used is to be ascertained in a broad, common sense manner. The language which has to be construed in the present case uses common words.

64. Mr. Streeten rightly accepted that the ordinary meaning of the phrase "A includes B" is that B forms part of, rather than exhaustively defines, A. He is relying upon canons of construction in order to arrive at a different understanding; one which amounts to saying that "including" has been used in paragraph AA.2(3)(a) of Part 1 in the sense of "meaning". So, for example, as Ms Osmund-Smith pointed out, sub-paragraph (i) would be read as if it had said "impact on the amenity of any adjoining premises through overlooking, privacy and the loss of light".

65. *Bennion* points out at Section 20.1 that canons of construction are not to be rigidly applied but provide useful tools for analysing the language used. In *Cusack v Harrow London Borough Council* [2013] 1 WLR 2022 Lord Neuberger PSC said that canons of construction have a valuable part to play, but "as guidelines rather than railway lines". Although those canons embody logic or common sense, they exist to illuminate and help, but not to constrain or inhibit ([57] to [60]).

66. Legislation is to be read as a whole, so that a provision within an enactment is not to be read as if it stood alone, but in its context as part of that instrument (*Bennion* Section 21.1).

67. There are presumptions that every word in an enactment is to be given meaning; that where the same word is used more than once it has the same meaning, and that different words have different meanings unless the context indicates otherwise (*Bennion* at Sections 21.2 to 21.3). But it has also been said that redundancy seldom carries great weight in statutory interpretation. It is not unusual for Parliament to say expressly what the courts would have inferred anyway (Lord Hoffmann in *Walter v Centaur Clothes Group Limited* [2000] 1WLR 744, 805D). Sometimes language which is strictly unnecessary is included out of an abundance of caution, or for the avoidance of doubt (*Re section 14(5)(d) of the Land Compensation Act 1961* [2018] 2 P & CR 6 at [79] and *Bennion* at p.643).

68. The Explanatory Memorandum to a statutory instrument may be used to explain its context, or the mischief at which it is aimed, or to assist in resolving an ambiguity in the legislation (*Bennion* at Section 24.24 and *Coventry and Solihull Waste Disposal Company Limited v Russell (Valuation Officer)* [1999] 1 WLR 2093, 2103).

69. Mr. Streeten cited *R (Smolas) v Herefordshire Council* [2021] PTSR 1896 at [33] for the proposition that the prior approval procedure is intended to be a "light touch" process. In fact that passage only summarised submissions made by the claimant in that case. The judge did not endorse that notion as an interpretative tool (see [82]). No doubt the *procedural* steps in applying for prior approval are to involve the "minimum of formalities" and are intended to be simple to operate (*Murrell v Secretary of State for Communities and Local Government* [2011] 1 P & CR 6 at [29]). But there the Court was not dealing with the interpretation of the subjects which a LPA may consider and control when making substantive decisions on whether to grant or refuse prior approval. That must depend upon the language used, read in context and as part of the legislation as a whole.

70. The Court may consider a consultation paper as part of the contextual setting for legislation, or to help identify the mischief at which it is aimed. But plainly a consultation paper which seeks views on a subject without at the same time putting forward a draft of the legislation to be enacted will carry little weight and, indeed is likely to be irrelevant to the meaning of the words used in the statute or statutory instrument subsequently drafted and enacted (see e.g. *Bennion* Section 24.9 at pp.731-2).

Discussion

To what extent does Class AA of Part 1 establish a principle of development?

71. In *Murrell* the Court of Appeal accepted that the grant of permitted development rights in the GPDO 2015 involves a decision on an issue of principle which is not for consideration in the prior approval procedure, "if the GPDO requirements [i.e. the prior approval requirements] are met" (see [45]). Likewise, in [46] the Court stated that a permitted development right which is subject to prior approval does not crystallise until that procedure is completed. Rights of this kind do not accrue in relation to any land unless and until a particular proposal complies with the prior approval procedure and, at that point, the right may only be exercised in accordance with that proposal as approved (or, in some cases, deemed to be approved). As Lindblom LJ stated in the *Rights: Community: Action* case, the prior approval procedure is embedded in the permitted development right and the approval is an essential component of the consent granted ([64] and [68]).

72. It is therefore unhelpful simply to state the bald proposition that the permitted development right *establishes* the principle of that development without more. The right, and the principle it recognises, is contingent upon the grant of prior approval for a specific proposal. *Murrell* illustrates this point and how it is necessary to be careful, both in defining the principle and how it intersects with the prior approval procedure.

73. That case was concerned with the erection of an agricultural building in the open countryside under Class A of Part 6 of the Order. The Inspector had refused to grant prior approval, relying upon (inter alia) settlement and general countryside policies (see [19] – [20]). The Court of Appeal accepted that it would have been permissible for the Inspector to rely upon those policies in order to reject the proposal on the grounds of impact on visual amenity. But it was impermissible for her to rely on those policies in order to reject it as conflicting with their objectives (see [47] – [49]). That reasoning did not involve a site-specific assessment of a proposal falling within the parameters of the permitted development right. Instead, it involved a policy objection to the principle of such development taking place in the countryside in general.

74. If the Inspector in that case had confined herself to rejecting the proposal because of its harmful visual impact on that particular rural location, that would have fallen within the control of "external appearance" under the prior approval provisions and would not have involved any improper challenge to what is authorised by Class A of Part 6. The reasoning in *Murrell* shows that it is not helpful to make the generalised statement that a permitted development right of that kind *establishes* a principle of development. That ignores the prior approval controls to which the right is subject. There is no justification for putting any such gloss on the text of the GPDO 2015, instead of just applying the language actually used in the Order.

75. The same approach applies to the interpretation and application of Class AA of Part 1. Class AA defines the *maximum* number of storeys which may be erected above a dwelling, and paragraph AA.1 sets out a number of parameters for defining the *maximum* height to which a proposal may be built, subject in each case to obtaining prior approval for a particular proposal. Paragraph AA.1(i) also confines the footprint of an extension to the principal part (as defined in paragraph AA.4) of the existing dwelling. By implication the right may be exercisable laterally *up to* the extent of that footprint. The form of the new roof is further constrained by the condition in paragraph AA.2(c), which requires its pitch to be the same as that of the roof of the existing dwelling.

Can scale be controlled by the prior approval code for Class AA of Part 1?

76. In paragraph 51(1) of his Skeleton Mr. Streeten accepted that the height, bulk and mass of the extension could form a reason for refusal of prior approval under, for example, paragraph AA.2(3)(a)(i), if they would "result in unacceptable overlooking, loss of privacy or loss of light". In other words, the prior approval process may be used to restrict the height or the bulk of a proposed extension within the ambit of the relevant control in paragraph AA.2(3)(a). A LPA might, for example, require a new storey to be set back so as to avoid an objectionable loss of light to a neighbouring property. This straightforward line of reasoning does not involve any impermissible questioning of the development right granted by Class AA of Part 1 or the "principle" of that right.

77. The same analysis also applies to the other limbs of paragraph AA.2(3). Mr. Streeten accepted that this is so in relation to sub-paragraphs (iii) and (iv). Plainly, impacts upon air traffic and defence assets and upon protected vistas may be affected unacceptably by both the height and bulk or scale of a proposed extension. Mr. Streeten also accepts that the height and bulk of a proposal may also be controlled under sub-paragraph (ii) (external appearance) but, he says, only in relation to its impact on the subject building itself. I return to that issue below.

78. Given that height and bulk may be controlled within the ambit of paragraph AA.2(3)(a), and that that may be done without any unlawful conflict with the grant of the permitted development right, Mr. Streeten's reliance upon the decisions in *MMF* and *Crystal Property* falls away. In *MMF* outline planning permission had been granted approving the "scale" of the proposal, but leaving "appearance" to be dealt with as a reserved matter. Because of the way in which that express grant of planning permission had separated "scale" from "appearance", it was necessary for the Court to explain how those two aspects should be distinguished. It was relevant to do so in the context of the predecessor of the DMPO 2015 then in force and its definitions of those two terms. "Scale" was defined so as to refer to the height, width and length of a building in relation to its surroundings. "Appearance" concerned the visual impression made by a building, including its external built form. Because Simon J was forced to draw a line between the two, he concluded that "appearance" excluded height in so far as it was concerned with a building's relationship with its surroundings (see [8]). He did not decide as a general principle that the "appearance" of a building only concerns the effects of that appearance on the building itself and not on its surroundings. Indeed, the judge explicitly came to the opposite conclusion in [11] (see [58] above). The context for the decision in *Crystal Property* was very similar.

79. Neither *MMF* nor *Crystal* were concerned with a prior approval scheme for a permitted development right such as Class AA of Part 1. They do not assist in the interpretation of paragraph AA.2(3)(a)(ii). As explained above, it is clear that Class AA does not grant a permission for any particular "scale" of development and scale can be controlled under the prior approval provisions. The dichotomy between "scale" and "appearance" in the outline planning permission granted in *MMF*, whereby scale was already approved by that permission and could *not* be controlled as a reserved matter, does not exist in Class AA of Part 1, nor indeed in any of the related Classes of permitted development.

80. The grant of the permitted development right in Class AA and paragraph AA.1 sets the outer limits, or parameters, of what may lawfully be put forward in an application for approval of a development on a specific site, applying paragraphs AA.2 and AA.3. Accordingly, not all development approved under Class AA may reach one or more of those maximum limits, because a developer may choose to seek approval for a lesser scheme, or the decision-maker may decide that the scale of the proposal (or some aspect of that scale) is too great, acting within the ambit of the prior approval controls in paragraph AA.2(3)(a).

"Adjoining premises"

81. Counsel helpfully made submissions on the meaning of the phrase "adjoining premises" in paragraph AA.2(3)(a)(i), although none of the challenges to the decision letters turn on this specific point. But its meaning does nevertheless form part of the context for the issues which do need to be determined.

82. I cannot accept the narrower construction advanced by Mr. Streeten that the amenity control only concerns those properties which abut, or are contiguous with, the subject property. The normal meaning of the word "adjoining" includes "adjacent" or "neighbouring". I do not regard the express use of the word "neighbouring" in the comparable controls in Class ZA, A and AA to AD of Part 20 as indicating that a different meaning should be given to "adjoining" in Class AA of Part 1 (see below). Of more significance is the fact that where in the GPDO 2015 the draftsman meant to say "immediately adjoining", he has used that express language (see e.g. Paragraph D3 of Part 9, paragraph N2 of Part 17).

83. Paragraph 7.12 of the Explanatory Memorandum to SI 2020 No.755 states:

> "The right is subject to obtaining prior approval from the local planning authority, which will consider certain matters relating to the proposed construction of additional storeys. These are consideration of the impact on the amenity of neighbouring premises, including overlooking, privacy and overshadowing; the design, including the architectural features of the principal elevation of the house, and of any side elevation which fronts a highway; and the impacts a taller building may have on air traffic and defence assets and on protected vistas in London"

Thus, it is plainly stated that one of the matters to which the permitted development right is subject is prior approval in respect of a proposal's impact on "the amenity of neighbouring premises".

84. The claimants' submission also has implications for the operation of the prior approval procedure. Paragraph AA.3 requires the LPA to notify each "adjoining owner or occupier" of the proposal and to take into account their representations when determining the application. That expression is defined by article 2(1) to mean "any owner or occupier of any premises or land adjoining the site". The same obligation is imposed on LPAs in relation to the prior approval procedure under Classes ZA, A and AA to AD of Part 20 (see paragraph B(12)). It would make no sense for the legislation to require the authority to assess the impact of a proposal on the amenity of "neighbouring" premises, but to consult only a narrower class of neighbours, namely those living in dwellings contiguous with the subject property. It is plain that in the statutory instrument the draftsman uses the words "neighbouring" and "adjoining" interchangeably and with the same meaning. It would also make no sense in Class AA of Part 1 to confine the obligation to consult, or the control of impact on amenity, to occupiers of dwellings contiguous with the subject premises. Issues concerning, for example, overlooking and privacy may well affect other neighbouring properties as well.

85. Lastly on this topic, Mr. Streeten referred to s.60(2B) and (2C), which authorises a development order to include a provision that where the owner or occupier of adjoining premises objects to a development on land which is a dwelling house or within its curtilage, the LPA must be satisfied that it will not have an unacceptable impact on the amenity of "adjoining premises" (defined so as to refer to the dwelling concerned or the boundary of its curtilage). The control which applies to development falling with paragraph A.4 of Part 1 in Schedule 2 to the GPDO 2015 is authorised by this provision. The prior approval controls for Class AA of Part 1 and related Classes are not authorised by s.60(2B) and (2C). In any event, where those provisions are engaged, I do not accept that the reference to "boundary" should be taken to imply that "adjoining" requires contiguity. Adjoining premises could be neighbouring premises in relation to that curtilage.

Is control of external appearance or impact on amenity limited to the matters included?

86. I do not consider that the word "including" in either sub-paragraph (i) or (ii) of paragraph AA.2(3)(a) is to be read as limiting the matters which can be taken into account under "amenity" or "external appearance" to those which are expressly specified as being included. The word "including", read in the context of this legislation, does not have an exhaustive effect. Indeed, as Ms Osmund-Smith said, if the intention had been to limit prior approval controls to the matters specified, the obvious course would have been to say so directly. There would have been no need to refer to "amenity" or "external appearance", or to introduce the specified matters by the word "including".

87. *Dilworth* was a case dealing with the construction of an interpretation section (see also *Bennion* at Sections 18.2 and 18.3). Here we are dealing with the construction of a power to control details of a proposed development. The *obiter* passage in *Dilworth* at p.106 relied upon by Mr. Streeten puts forward two possible explanations for the use of the word "including" in an interpretation section. First, it may enlarge the natural meaning of the word being defined. Second, where that is not the *sole* purpose, the word "including" *may* be equivalent to *"mean and include,* so as to introduce an exhaustive explanation of the word being defined. So it is plainly implicit in that passage in *Dilworth* that there may be other explanations for the use of the word "including".

88. *Bennion* at Section 17.4 refers to the drafting technique of including examples in a statutory provision such as a power. In my judgment, there is no reason to think that the specific terms in paragraph AA.2(3)(a)(i) and (ii) were intended to delimit the scope of that part of the power, rendering the broader language "amenity of any adjoining premises" and "external appearance of the dwelling house" effectively otiose. Instead, they are examples of the

matters which are to be controlled by the decision-maker. The rejection of the claimants' submission that the matters "included" are exhaustive as to the scope of the LPA's power does not render the language describing those matters superfluous. That language makes it plain that the matters "included" are to be taken into account by the LPA. *Bennion* provides illustrations of this drafting technique (see, for example, *Inland Revenue Commissioners v Parker* [1966] AC 141, 160 E – 161 F).

89. I am reinforced in this approach to the use of the word "including" by comparing Class A of Part 20 with Class AA of Part 1 and Classes AA to AD of Part 20. The latter group all refer to the same matters as being "included" in external appearance. The former simply refers to "external appearance"[1]. If the claimants' construction in relation to Class AA of Part 1 is correct than it must also apply to Classes AA to AD of Part 20. But Classes AA to AD of Part 20, like Class A of the same Part, are all dealing with the creation of multiple new dwellinghouses on top of existing buildings. Certainly, in the case of Classes A, AA and AB these buildings may be substantial. It would make no sense for the Order to allow LPAs to control all aspects of external appearance where an upwards extension is to be constructed on a block of flats, but to confine that consideration to the principal elevation and any side elevation fronting a highway where the existing building is a detached (or terraced) commercial or mixed use building.

90. Mr. Streeten sought to address this difficulty in his argument by suggesting that the control of external appearance is different for upwards extensions to a purpose-built block of flats because that development would be more likely to be viewed from all sides. That suggestion is untenable. Commercial (or mixed use) buildings are no different in principle. They may or may not be freestanding. Both types of building may be visible on all sides. Indeed, both Class A and Class AA of Part 20 can only apply to detached buildings. There is no sensible reason why the external appearance of a commercial building should only be assessed in relation to its principal elevation and any side elevation fronting a highway, and a broader approach taken to a purpose-built block of flats, given that they both deal for this purpose with additional development of essentially the same nature.

91. It should also be recalled that an application for prior approval under Class AA of Part 1 (or indeed under Classes AA to AD of Part 20) is required to include drawings showing all elevations of the building as proposed to be extended. An approval, if granted, must relate to those drawings and the development must be carried out in accordance with them. It would be inconsistent with the nature of that approval that an LPA should grant it without considering all the submitted elevations and applying the controls in paragraph AA.2(3)(a) to the proposal as a whole.

92. A proposal for an upwards extension of a building, whether under Class AA of Part 1 or Classes ZA, A and AA to AD of Part 20, is capable of having a significant impact on the amenity of neighbouring premises, which is not confined to overlooking, privacy or loss of light. Such impacts may include, for example, impact on outlook, noise and activity. There is no reason to think that the language used in the GPDO 2015 was meant to exclude such considerations from control by prior approval.

93. Accordingly, I reject the claimants' primary submission based upon *Dilworth* and the *expressio unius est exclusio alterius* canon of construction.

Is the control of external appearance or impact on amenity restricted to a genus?

94. The claimants' case is not assisted by the *ejusdem generis* principle. First, where it applies, the specific language of the legislation is not treated as being exhaustive. Instead, it operates so that the broader language used, here "impact on amenity" and "external appearance", is read down by reference to the "genus" identified from the specific language used (see *Bennion* at Section 23.2). So, for example, impact on amenity would not be limited to overlooking, privacy and loss of light, as in the claimants' primary submission, but, according to Mr. Streeten, would deal with the living conditions of private individuals. That interpretation would allow impact on outlook for such individuals to be considered under paragraph AA.2(3)(a)(i), as in the appeal decision on 31 Gaywood Avenue.

95. Second, and in any event, the *ejusdem generis* principle generally only applies where specific terms are followed by wider terms and not where, as in this case, general language is followed by specific language (*Bennion* at Section 23.5 and 23.7).

96. Third, for the *ejusdem generis* principle to apply there must be a sufficient indication in the legislation of a category properly described as a *genus*. The classes upon which Mr. Streeten based his argument are not justified. In the control of "external appearance" paragraph AA.2(3)(a)(ii) does not insist that the principal elevation should be one facing a highway, although it may often do so. There is no basis for restricting the general expression "external appearance" to public facing elevations. The same applies to the prior approval controls of the external appearance of development within Classes AA to AD of Part 20 (see [48] above). There is also no basis for restricting "impact on amenity" to the "living conditions of private individuals". "Adjoining premises", the amenity of which may be impacted, is not confined to residential premises, or to premises used for living or occupied by private individuals. The control relates to adjoining premises generally.

97. Fourth, the *ejusdem generis* principle is subject to context. For the reasons already given, there is no justification for reading down the words "impact on amenity" and "external appearance" in the way the claimants seek to do. The principle invoked by the claimants does not help in the interpretation of the prior approval code in Class AA of Part 1 or the related Classes.

Whether control of external appearance is limited to its effects on the subject property

98. I also reject the claimants' submissions that the "external appearance" control is confined to an assessment of the impact of that appearance on the subject property itself, as opposed to its surroundings. There is nothing in the language of the GPDO 2015 to justify this construction. Paragraph AA.2(3)(a)(ii) simply requires a developer to obtain prior approval of the "external appearance of the dwelling house…". The Order does not contain any language to the effect that the decision-maker may only assess the impact of that external appearance *on* the dwellinghouse itself. That interpretation involves reading additional words into the legislation when there is no legal justification for doing so. The LPA is therefore empowered to assess and control all relevant aspects of that external appearance, and not simply those which impact on the subject building.

Consultation documents and the NPPF

99. The conclusions on interpretation to which I have come are consistent with the overall tenor of the consultation material the Court was shown. They are also consistent with the relevant provisions in the NPPF.

Conclusions

100. Because I have rejected the claimants' construction of Class AA of Part 1 in Schedule 2 to the GPDO 2015, it follows that all three claims for statutory review must be dismissed.

101. The decision of each Inspector was entirely lawful. That is as far as the Court's function permits this judgment to go. Individual decision-makers will make their own planning judgments applying the prior approval controls, correctly interpreted, to the materials before them. This judgment does not mean that individual decision-makers would be bound to determine the appeals on the three properties the subject of these proceedings in the way that in fact occurred. That is always a matter of judgment for the person or authority taking the decision. I would also add that there is no evidence before the Court to show that the correct interpretation of Class AA of Part 1, along with the related Classes in Part 20, will in practice make it impossible or difficult for developers to rely upon these permitted development rights, as Mr. Streeten began to suggest at one point in his oral submissions.

102. I summarise the court's main conclusions on the interpretation of Class AA of Part 1 of Schedule 2 to the GPDO 2015:

(i) Where an application is made for prior approval under Class AA of Part 1 of Schedule 2 to the GPDO 2015, the scale of the development proposed can be controlled within the ambit of paragraph AA.2(3)(a);

(ii) In paragraph AA.2(3)(a)(i) of Part 1, "impact on amenity" is not limited to overlooking, privacy or loss of light. It means what it says;

(iii) The phrase "adjoining premises" in that paragraph includes neighbouring premises and is not limited to premises contiguous with the subject property;

(iv) In paragraph AA.2(3)(a)(ii) of Part 1, the "external appearance" of the dwelling house is not limited to its principal elevation and any side elevation fronting a highway, or to the design and architectural features of those elevations;

(v) Instead, the prior approval controls for Class AA of Part 1 include the "external appearance" of the dwelling house;

(vi) The control of the external appearance of the dwelling house is not limited to impact on the subject property itself, but also includes impact on neighbouring premises and the locality.

Annex – Class AA of Part I of Schedule 2 to the GPDO 2015

Class AA - enlargement of a dwellinghouse by construction of additional storeys

Permitted development

AA. The enlargement of a dwellinghouse consisting of the construction of—

(a) up to two additional storeys, where the existing dwellinghouse consists of two or more storeys; or

(b) one additional storey, where the existing dwellinghouse consists of one storey, immediately above the topmost storey of the dwellinghouse, together with any engineering operations reasonably necessary for the purpose of that construction.

Development not permitted

AA.1. Development is not permitted by Class AA if—

(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G, M, MA, N, O, P, PA or Q of Part 3 of this Schedule (changes of use); (b) the dwellinghouse is located on—

(i) article 2(3) land; or

(ii) a site of special scientific interest;

(c) the dwellinghouse was constructed before 1st July 1948 or after 28th October 2018;

(d) the existing dwellinghouse has been enlarged by the addition of one or more storeys above the original dwellinghouse, whether in reliance on the permission granted by Class AA or otherwise;

(e) following the development the height of the highest part of the roof of the dwellinghouse would exceed 18 metres;

(f) following the development the height of the highest part of the roof of the dwellinghouse would exceed the height of the highest part of the roof of the existing dwellinghouse by more than—

(i) 3.5 metres, where the existing dwellinghouse consists of one storey; or

(ii) 7 metres, where the existing dwellinghouse consists of more than one storey;

(g) the dwellinghouse is not detached and following the development the height of the highest part of its roof would exceed by more than 3.5 metres—

(i) in the case of a semi-detached house, the height of the highest part of the roof of the building with which it shares a party wall (or, as the case may be, which has a main wall adjoining its main wall); or

(ii) in the case of a terrace house, the height of the highest part of the roof of every other building in the row in which it is situated;

(h) the floor to ceiling height of any additional storey, measured internally, would exceed the lower of—

(i) 3 metres; or

(ii) the floor to ceiling height, measured internally, of any storey of the principal part of the existing dwellinghouse;

(i) any additional storey is constructed other than on the principal part of the dwellinghouse;

(j) the development would include the provision of visible support structures on or attached to the exterior of the dwellinghouse upon completion of the development; or

(k) the development would include any engineering operations other than works within the curtilage of the dwellinghouse to strengthen its existing walls or existing foundations.

Conditions

AA.2.—(1) Development is permitted by Class AA subject to the conditions set out in subparagraphs (2) and (3).

(2) The conditions in this sub-paragraph are as follows—

(a) the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;

(b) the development must not include a window in any wall or roof slope forming a side elevation of the dwelling house;

(c) the roof pitch of the principal part of the dwellinghouse following the development must be the same as the roof pitch of the existing dwellinghouse; and

(d) following the development, the dwellinghouse must be used as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse.

(3) The conditions in this sub-paragraph are as follows—

(a) before beginning the development, the developer must apply to the local planning authority for prior approval as to—

(i) impact on the amenity of any adjoining premises including overlooking, privacy and the loss of light;

(ii) the external appearance of the dwellinghouse, including the design and architectural features of—

(aa) the principal elevation of the dwellinghouse, and

(bb) any side elevation of the dwellinghouse that fronts a highway;

(iii) air traffic and defence asset impacts of the development; and

(iv) whether, as a result of the siting of the dwellinghouse, the development will impact on a protected view identified in the Directions Relating to Protected Vistas dated 15th March 2012 issued by the Secretary of State;

(b) before beginning the development, the developer must provide the local planning authority with a report for the management of the construction of the development, which sets out the proposed development hours of operation and how any adverse impact of noise, dust, vibration and traffic on adjoining owners or occupiers will be mitigated;

(c) the development must be completed within a period of 3 years starting with the date prior approval is granted;

(d) the developer must notify the local planning authority of the completion of the development as soon as reasonably practicable after completion; and
(e) that notification must be in writing and include—

(i) the name of the developer;

(ii) the address of the dwellinghouse; and (iii) the date of completion.

Procedure for applications for prior approval

AA.3.—(1) The following sub-paragraphs apply where an application to the local planning authority for prior approval is required by paragraph AA.2(3)(a)

(2) The application must be accompanied by—

(a) a written description of the proposed development, including details of any works proposed;

(b) a plan which is drawn to an identified scale and shows the direction of North, indicating the site and showing the proposed development; and

(c) a plan which is drawn to an identified scale and shows—

(i) the existing and proposed elevations of the dwellinghouse, and (ii) the position and dimensions of the proposed windows.

together with any fee required to be paid.

(3) The local planning authority may refuse an application where, in its opinion—

(a) the proposed development does not comply with, or

(b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with,

any conditions, limitations or restrictions specified in paragraphs AA.1 and AA.2.

(4) Sub-paragraphs (5) to (8) do not apply where a local planning authority refuses an application under sub-paragraph (3); and for the purposes of section 78 (appeals) of the Act, such a refusal is to be treated as a refusal of an application for approval.

(5) The local planning authority must notify each adjoining owner or occupier about the proposed development by serving on them a notice which—

(a) describes the proposed development, including the maximum height of the proposed additional storeys;

(b) provides the address of the proposed development; and

(c) specifies the date, which must not be less than 21 days from the date the notice is given, by which representations are to be received by the local planning authority.

(6) Where the application relates to prior approval as to the impact on air traffic or defence assets, the local planning authority must consult any relevant operators of aerodromes, technical sites or defence assets and where appropriate the Civil Aviation Authority and the Secretary of State for Defence.

(7) Where an aerodrome, technical site or defence asset is identified on a safeguarding map provided to the local planning authority, the local planning authority must not grant prior approval contrary to the advice of the operator of the aerodrome, technical site or defence asset, the Civil Aviation Authority or the Secretary of State for Defence.

(8) Where the application relates to prior approval as to the impact on protected views, the local planning authority must consult Historic England, the Mayor of London and any local planning authorities identified in the Directions Relating to Protected Vistas dated 15th March 2012 issued by the Secretary of State.

(9) The local planning authority must notify the consultees referred to in sub-paragraphs (6) and (8) specifying the date by which they must respond, being not less than 21 days from the date the notice is given.

(10) When computing the number of days in sub-paragraphs (5)(c) and (9), any day which is a public holiday must be disregarded.

(11) The local planning authority may require the developer to submit such information as the authority may reasonably require in order to determine the application, which may include— (a) assessments of impacts or risks;

(b) statements setting out how impacts or risks are to be mitigated, having regard to the National Planning Policy Framework issued by the Ministry of Housing, Communities and Local Government in July 2021; and

(c) details of proposed building or other operations.

(12) The local planning authority must, when determining an application—

(a) take into account any representations made to them as a result of any notice given under sub-paragraph (5) and any consultation under sub-paragraph (6) or (8); and

(b) have regard to the National Planning Policy Framework issued by the Ministry of Housing,

Communities and Local Government in July 2021, so far as relevant to the subject matter of the prior approval, as if the application were a planning application.

(13) The development must not begin before the receipt by the applicant from the local planning authority of a written notice giving their prior approval.

(14) The development must be carried out in accordance with the details approved by the local planning authority.

(15) The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.

Interpretation of Class AA

AA4.—(1) For the purposes of Class AA—

"defence asset" means a site identified on a safeguarding map provided to the local planning authority for the purposes of a direction made by the Secretary of State in exercise of the powers conferred by article 31(1) of the Procedure Order or any previous powers to the like effect;

"detached", in relation to a dwellinghouse, means that the dwellinghouse does not—

(a) share a party wall with another building; or

(b) have a main wall adjoining the main wall of another building;

"principal part", in relation to a dwellinghouse, means the main part of the dwellinghouse excluding any front, side or rear extension of a lower height, whether this forms part of the original dwellinghouse or is a subsequent addition;

"semi-detached", in relation to a dwellinghouse, means that the dwellinghouse is neither detached nor a terrace house;

"technical sites" has the same meaning as in the Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002;

"terrace house" means a dwellinghouse situated in a row of three or more buildings, where—

(a) it shares a party wall with, or has a main wall adjoining the main wall of, the building on either side; or

(b) if it is at the end of a row, it shares a party wall with, or has a main wall adjoining the main wall of, a building which fulfils the requirements of paragraph a.

(2) In Class AA references to a "storey" do not include—

(a) any storey below ground level; or

(b) any accommodation within the roof of a dwellinghouse, whether comprising part of the original dwellinghouse or created by a subsequent addition or alteration,

and accordingly, references to an "additional storey" include a storey constructed in reliance on the permission granted by Class AA which replaces accommodation within the roof of the existing dwellinghouse.

Note 1 Class ZA is different in that it deals with the erection of an entirely new building following the demolition of an existing building. [Back]

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The Planning Inspectorate

Appeal Decision

Site Visit made on 15 June 2021

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 5th July 2021

Appeal Ref: APP/W1905/W/20/3265298
31 Gaywood Avenue, London EN8 8QE

- 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 AA, Paragraph AA.2.(3) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
- The appeal is made by Mr Chaim Bard, Cab Housing Ltd against the decision of Broxbourne Borough Council.
- The application Ref: 07/20/0813/P4D, dated 14 September 2020, was refused by notice dated 11 November 2020.
- The development proposed is described as prior approval for construction of an additional floor above the principal part of the house to add additional living space to the existing dwelling house.

Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for an award of costs was made by Mr Chaim Bard, Cab Housing Ltd against Broxbourne Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The description in the banner heading above is taken from the appeal form and decision notice, in the interests of clarity.

Main Issue

4. The main issue is whether the proposal would be permitted development under Schedule 2, Part 1, Class AA of the GPDO.

Reasons

5. Under Schedule 2, Part 1, Class AA, Condition AA.2.(3)(a) of the GPDO, it is necessary to assess factors including (i) the proposal's impact on the amenity of adjoining premises and (ii) the external appearance of the dwellinghouse.

6. Condition AA.2.(3)(a) criterion (ii) sets out that external appearance of the dwellinghouse *includes* the design and architectural features of principal elevation of the dwellinghouse, and any side elevation of the dwellinghouse that fronts a highway. This does not preclude consideration of other factors which are relevant to the visual impression that the dwellinghouse makes, such as the design and architectural features of other elevations. In the current

case, the design and architectural features of the proposed rear elevation is one of the factors relevant to assessment of the external appearance of the dwellinghouse.

7. Condition AA.2.(3)(a)criterion (i) sets out that amenity factors *include* overlooking, privacy and the loss of light. This does not preclude consideration of other factors relevant to amenity. Regarding the scope of amenity, criterion l) of Policy EQ1 of the Broxbourne Local Plan (2020) is a useful reference point. This includes outlook of neighbouring occupiers. In the current case, whether the proposal would have an overbearing effect on the outlook of occupants of neighbouring dwelling No 29 Gaywood Avenue is one of the amenity factors that is relevant to assessment of the proposal's impact on adjoining premises.

8. The appeal property is a detached single storey dwelling within a mainly residential area. It is part of a cluster of bungalows of some architectural diversity, situated towards the end of a cul-de-sac road. There is a mix of terraced rows of two storey dwellings to the south and east of the appeal site, rows of semi-detached two storey dwellings to the west and rows of bungalows to the north and south east. This mix includes various extensions and some juxtaposition of bungalows and two storey properties. Pitched gable roof forms of various height and size constitute the predominant roof style. As such, the context is an area of mixed twentieth century suburban residential character with some variety of building form, size and style. A street tree to the west of the site adds to the streetscene and softens views from the west.

9. The appeal site has a somewhat individualistic character, given its relatively wide front and rear elevations, and concentration of garden space to its sides and front. It has a relatively narrow strip of rear garden space, adjacent to the side boundary of adjoining property No 29. Also, as neighbouring rows of buildings do not flow closely on from its side elevations, and it is a detached property among a mix of mainly terraced and semi-detached dwellings, it is somewhat atypical of its locality.

10. Within this context, viewed from the front and sides of the building, the proposed enlarged two storey, pitched roof dwelling would assimilate with the locality's mixed suburban residential character, which includes two storey dwellings and some juxtaposition of bungalows and two storey houses. The site would continue to have a somewhat individualistic character. Also, the nearby street tree would also have a softening effect on views of the western side elevation from the street.

11. Regarding the receivable light aspect of amenity, the boundary wall on the appeal site's northern perimeter casts some shadow to the north. This wall would be retained, with its shadowing effect. The substantial gap between the eastern elevation of No 31 Gaywood Avenue and the side elevation of No 33 would not be reduced and so daylight and sunlight access to the No 29 via that gap would endure.

12. Furthermore, the Sunlight and Daylight assessment by the appellant's consultant engineer sets out that while daylight and sunlight to the windows and garden of No 29 would be reduced by a small amount, they would remain well above the minimum recommended by the BRE Guide[1]. I see no reason to

[1] Site Layout and Planning for Daylight and Sunlight, A guide to good practice, Second Edition (Building Research Establishment, 2011).

doubt the accuracy of this assessment. Given the above, the proposal would not significantly reduce daylight and sunlight to the adjoining premises. Therefore, within the suburban residential context, the proposal would not harm the amenity of adjoining premises in terms of receivable light.

13. Regarding privacy, the obscure glazed, unopenable nature of the rear windows of the proposed first floor storey would avoid overlooking and loss of privacy of adjoining premises. Perceptions to the contrary would not alter this actuality. Therefore, the proposal would not harm the amenity of adjoining premises in terms of overlooking and privacy.

14. However, the proposed heightened bulk of the building, in combination with its substantial width of around 19.3m close to No 29's side boundary would appear over dominant, viewed from the rear, from neighbouring garden space to the north. Moreover, the extent of the row of five adjacent sets of obscure glazed windows across the first floor level of the proposed rear elevation would stand out discordantly within the residential suburban scene. This would draw further attention to the bulk of the proposed enlarged building, and contribute to its visually jarring impact.

15. The above adverse impacts would largely be contained to views of the proposed rear elevation from neighbouring premises, and so would be relatively localised. Nevertheless, given the substantial width of the proposed building mass and its close proximity to No 29, the impact would be substantially discordant in terms of both appearance and outlook, viewed from neighbouring premises.

16. Therefore, the proposal would result in development that would have an adverse impact on the amenity of adjoining premises and the external appearance of the dwellinghouse. The use of exterior materials matching the existing building would not negate the adverse impacts of the enlarged mass.

17. Subsequent to the Council's decision on the planning application in this case, a lawful development certificate was granted for a rear dormer roof extension to the existing building[2]. The appellant indicates that they intend to erect the dormer extension under Part 1, Class B of the GPDO should the appeal fail. This other scheme, as illustrated in the appellant's Written Statement[3], would entail a dormer on part of the rear roof slope. This differs from the appeal proposal as it would not entail an additional first floor storey across the full footprint of the building, with associated additional increase in bulk and ridge height. As such, the appeal proposal would entail a significant step up in scale of building and associated impacts, compared to the potential dormer scheme. Thus, the dormer scheme carries limited weight in this case.

18. In conclusion, the proposal would not be permitted development under Schedule 2, Part 1, Class AA of the GDPO, with specific regard to criteria (i) and (ii) of condition AA.2.(3)(a).

Conclusion

19. For the above reasons the appeal is dismissed.

William Cooper INSPECTOR

[2] Application Ref: 07/20/1197/LDP.
[3] Page 11.

The Planning Inspectorate

Appeal Decision

Site Visit made on 20 August 2021

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th September 2021

Appeal Ref: APP/Y5420/D/21/3268817
20 Franklin Street, London N15 6QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
- The appeal is made by Mr G Schreiber against the decision of London Borough of Haringey.
- The application Ref HGY/2021/0172, dated 22 December 2020, was refused by notice dated 3 February 2021.
- The development proposed is described as: application for prior approval of the proposed enlargement of a dwellinghouse by construction of an additional storey pursuant to Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 1, Class AA.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr G Schreiber against the London Borough of Haringey. This application is the subject of a separate Decision.

Preliminary Matters

3. Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), permits development consisting of the enlargement of a dwellinghouse by construction of up to two additional storeys, where the existing dwellinghouse comprises two or more storeys.

4. As detailed within the GPDO, development under Class AA 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.

5. The provisions of the GPDO 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 host property. I therefore consider this to be the main issue in the appeal.

6. Development plan policies and the National Planning Policy Framework (the Framework) can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters. I have proceeded on this basis.

Main Issue

7. The main issue is whether prior approval should be given, having particular regard to the resulting external appearance of the dwellinghouse.

Reasons

8. The appeal property is a two storey dwellinghouse. It is the end property of a terrace of four properties where there is a slight step in the ridgeline between the two central properties. There is also single storey detached properties within Franklin Street. To the side and rear of the appeal site are three-storey purpose-built blocks of flats.

9. The appellant contends that in considering the '*external appearance of the building'* this should be confined solely to the building in question and not to its wider context or street-scene. However, the list within paragraph AA.2(3)(A)(ii) is prefaced by the word including, which indicates that it is not a closed list, and that other factors may be taken into account.

10. Moreover, whether the external appearance of a dwelling is acceptable is inherently linked to how it would be seen in relation to neighbouring buildings and the wider street-scene or landscape, as it may be. Appearance is not, therefore, 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. I therefore consider that it is reasonable, in the planning judgment under paragraph AA.2(3)(A)(ii) to take account of the effect of the proposed external appearance of the dwelling on the wider character and appearance of the area.

11. The proposed development is to erect an additional floor on top of an existing two storey end of terrace building. The appeal building is seen within a wider terrace of buildings which, although there is a slight step between the centre two dwellings on the terrace, has a consistency and rhythm in terms of height. The existing step is small and is not prominent. It reflects the slight incline in the street.

12. In the context of the above, the proposed development would, particularly when seen from parts of Franklin Street and Albert Road appear as a high, dominant, bulky and incongruous addition to the appeal building. It would visually disrupt the otherwise homogeneous character of the existing terrace and the sudden increase in height would jar with the remainder of the terrace.

13. Despite the use of matching materials, the proposed development would visually compete with the remainder of the terrace and would materially detract from the consistency and balance afforded to the otherwise lower-level development within the wider terrace which is positioned around the three storey blocks of flats to the side and rear. Although these flats are taller, and the resulting development would be of a similar height, they are purpose built blocks that are considerably different in appearance. Their presence does not justify allowing harmful development.

14. 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 paragraph 126 of the Framework 2021 which seeks to create high quality, beautiful and sustainable buildings and places.

15. In reaching my findings, I have had regard to the conflict with Policy SP11 of Haringey's Local Plan – Strategic Policies (2013) and Policies DM1 and DM12 of Haringey's Local Plan – Development Management DPD (2017) which require, amongst other things, that development is of a high standard of design including for residential extensions.

16. Since the original decision The London Plan 2021 has been published by the Mayor of London. The policies contained in The London Plan 2021 replace those of The London Plan 2016 referred to in the Council's original decision and as such those policies are no longer relevant.

Other Matters

17. The appellant has referred to documents entitled 'Planning Reform: Supporting the high street and increasing the delivery of new homes' (2018) and 'Planning for the Future' (2020). Although the citations the appellant has provided are supportive of the general principle, they do not remove the requirement in the GPDO to consider the impact on external appearance, of which I have found harm. I therefore give these documents limited weight in the appeal.

18. The appellant considers that the Council's approach to their consideration of the proposed development would frustrate the intentions of the legislation in providing more homes. Although the proposed development is for the extension to an existing dwelling rather than the creation of a new home, I do not consider that the Council's approach in considering the matter of the external appearance of the dwelling was incorrect. It is clear in the legislation that approval of the form of development proposed is not a *fait accompli*.

19. The appellant draws some comparison with the Council's decision to refusing to approve reserved matters on the grounds of the principle of development. As the proposed development is an entirely separate procedure, requiring the decision maker to have regard to 'external appearance', I find no merit in the appellants argument in this regard.

20. The appellant has referred to case law[1] in the approach to interpreting the GPDO. Although I have not been provided with a copy of the judgement, and the quotation refers to a different form of development, in effect, it clarifies that the interpretation of the GPDO should be on the basis of the 'ordinary meaning of the language used'. For the reasons given above, I consider that this is what the Council did in this case.

Conclusion

21. 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

[1] Lindblom LJ in R (Mawbey) v Lewisham BC [2019] EWCA Civ 1016

The Planning Inspectorate

Appeal Decision

Site visit made on 19 October 2021

by C Cresswell BSc (Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 November 2021

Appeal Ref: APP/Y5420/D/21/3277589
2 Lemsford Close, London N15 6BY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr Hirsch Rotenberg against the decision of the Council of the London Borough of Haringey.
- The application Ref HGY/2021/0653, received by the Council on 22 February 2021, was refused by notice dated 1 April 2021.
- The development proposed is erection of additional storey.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed second floor extension is permitted under Schedule 2, Part 1, Class AA of the GPDO[1], having regard to the external appearance of the dwelling and the amenity of adjoining occupiers.

Reasons

Appearance

3. The appeal concerns a terraced property with a flat roof. The proposed second floor extension would closely reflect the architectural style of the existing property, both in terms of its flat roof and the placement of windows. Viewed in isolation of adjoining development, the proposed extension would be in accordance with the design of the host property.

4. However, the appeal property is within a terrace of other properties which all share a similar design. As such, the street scene in this particular part of Lemsford Close displays a high degree of architectural consistency which contributes to its appearance. Although there are a number of taller buildings nearby, these are of a different design and are visually distinct from the row of terraced properties which the appeal property is part of.

5. The extension would add an additional storey to the property which would clearly protrude above the level of the adjoining flat roofs. This would give the terrace an uneven profile when seen from Lemsford Close, with the appeal

[1] Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

property appearing inconsistent with its neighbours. The disruptive effect of the extension on the appearance of the terrace would be particularly noticeable as the street scene here is open aspect, directly facing parkland. In oblique views from within the surroundings, the side elevations of the extension would be clearly seen above the height of the adjoining flat roofs.

6. The proposed extension would therefore appear out of keeping with the external appearance of the appeal property taking into account its placement within the adjoining terrace. Hence, the proposal would not accord with Paragraph AA.2(3)(a)(ii) of the GDPO which indicates that before beginning the development, the developer must apply for prior approval as to *the external appearance of the dwellinghouse, including the design and architectural features of- (aa) the principal elevation of the dwellinghouse, and (bb) any side elevation of the dwellinghouse that fronts a highway*.

7. The appellant argues that the wording of Paragraph AA.2(3)(a)(ii) means that the only relevant consideration is the effect of the proposed extension on the principal elevation of the dwelling and no account should be taken of the wider street scene. However, the wording above refers to the external appearance of the dwellinghouse, *including* the design and architectural features of the principal elevation. This indicates that matters for consideration are not purely confined to the appearance of the principal elevation but can include other things of relevance. Indeed, it seems to me that in this particular case it is not appropriate to consider the external appearance of the appeal property in isolation, especially as it is physically joined to a terrace which forms a relevant aspect of the external appearance of the building.

8. My attention has been drawn to an Appeal Decision[2] where an extension to a property in Waterlooville was approved. The Inspector in that particular case determined that the effect of the development on the street scene was not a relevant consideration given the wording of the GDPO. Yet while I note the approach taken by the Inspector in that case, I do not consider that it establishes a convincing precedent for the current appeal. Each case must be determined on its individual merits and, where prior approval requires the external appearance of a dwelling to be assessed, it will be a matter of planning judgment as to whether consideration should be given to the building's relationship with nearby properties. In the current appeal, I have determined that the placement of the dwelling within a terrace is of relevance and, for reasons given above, that the proposed extension would not be in accordance with Paragraph AA.2(3)(a)(ii) of the GDPO.

Amenity

9. Although the extension would introduce a window on the second floor, I am mindful that there are rear facing windows at first floor level along the whole terrace. Hence, the rear gardens of adjoining dwellings are already overlooked to some degree. While the introduction of a window at a higher level would enable occupants of the appeal property to gain more expansive views to the rear, this would not undermine the privacy of adjoining occupiers to any great extent. Due to the height of the proposed extension, the main outlook from the new window is likely to be over the properties in the adjacent terrace rather than directly downwards into the adjoining gardens.

[2] Appeal Decision: APP/X1735/D/21/3269472

10. I note that the rear gardens of the adjoining properties are relatively narrow and that the extension would be positioned high above them. However, considering that there is an area of public open space separating these rear gardens from the adjacent terrace to the south, the extension would not lead to a sense of enclosure. A relatively open outlook would be maintained from within these adjoining gardens.

11. Overall, the proposal would be acceptable in terms of Paragraph AA.2(3)(a)(i) of the GDPO, which refers to the impact on the amenity of any adjoining premises including overlooking, privacy and the loss of light.

Conclusion

12. Although I have found that the proposed extension would be acceptable in terms of amenity, the external appearance of the property would be harmed. For the reasons given above, the development is not permitted under the terms of the GDPO. The appeal should therefore be dismissed.

C Cresswell

INSPECTOR

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Planning Development
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04 March 2022

Dear Selina Donophy,

Application Reference No. APP/22/00084
Proposed Extension at 2 Bembridge Drive, Hayling Island PO11 9LU
Impact on 4 Bembridge Drive

Application Details Prior Approval for the enlargement of a dwellinghouse consisting of the construction of upto two additional storeys, immediately above the topmost storey of the dwellinghouse, with a maximum height of 12.1 metres, together with any engineering operations reasonably necessary for the purpose of that construction.

We are appointed by [redacted] are concerned about the loss of light to the windows on their side flank wall as a result of the proposed two further storeys on top of the existing building.

As a matter of formality, please treat this letter as an objection on behalf of [redacted] However, we are instructed that [redacted] do not object in principle to No. 2 Bembridge Drive being extended. This is providing any proposal is designed in accordance with the relevant planning standards, including that for daylight, sunlight and overshadowing.

Development under Class AA, Part 20 of the Town and Country Planning, General Permitted Development (England) Order 2015 (as amended) is subject to conditions. One such condition is that the developer must apply to the local planning authority for prior approval as to the impact on the amenity of any adjoining premises, including the loss of light.

The Building Research Establishment "Site Layout Planning for Daylight and Sunlight: a good practice guide" 2011 by PJ Littlefair, is nationally recognised as being the Guide to refer to for recommendations on daylight and sunlight. It contains guidance on site layout to provide good natural lighting within a development and the safeguarding of daylight and sunlight within existing buildings nearby.

Having reviewed the planning submission, we note the absence of a daylight and sunlight assessment. Given the scale of the proposal and its proximity to a main habitable window and the outdoor amenity areas at No. 4 Bembridge Drive, we are of the opinion that an assessment is needed to properly consider the impact on three separate material planning considerations - namely, daylight, sunlight and overshadowing.

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No. 5908040

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Essex SS6 7EW

We are also of the opinion that it would be unreasonable to grant planning permission without an assessment being undertaken. We anticipate that an assessment may show that some adjustment to the design is needed in order to reasonably safeguard the amenity of No 4 Bembridge Drive. This is discussed further below, with reference to specific objective tests used to assess natural lighting.

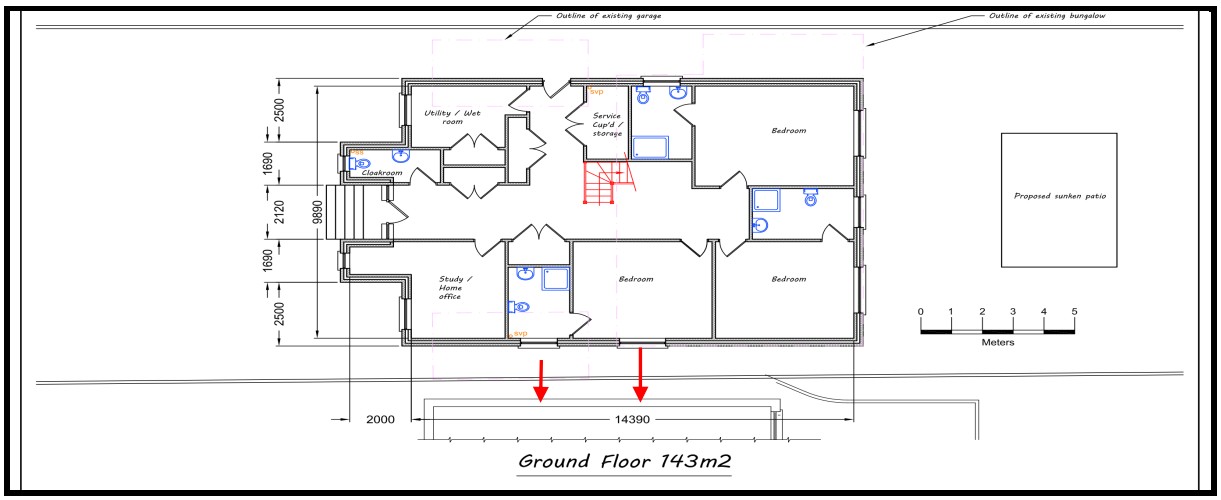
Application of BRE Site Layout Planning for Daylight and Sunlight: A guide to good practice

When considering daylight (light from the sky) it is necessary to establish the main window in a room. The main window is generally the largest window serving a room.

The ground floor side bedroom window at No. 4 Bembridge Drive already enjoys a relatively low level of daylight and sunlight due to the close proximity to No. 2 Bembridge Drive. The photograph below indicates the approximate distance between the two properties. Additionally, you will note that there are two ground floor side windows, one serving a cloakroom and the other a bedroom. Skylights to the first and second floors will also be impacted.

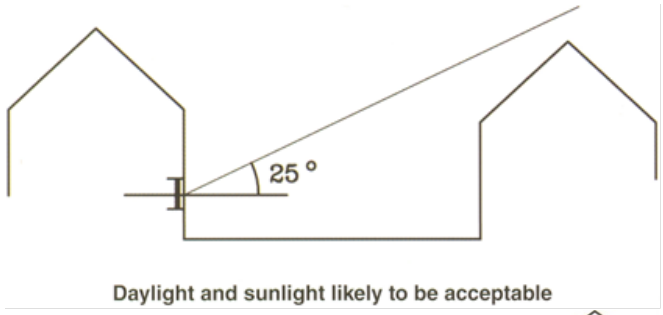


As can be seen from the ground floor layout plan below for 4 Bembridge Drive, this is the only window serving the bedroom and its light will be affected by the two storey extension.

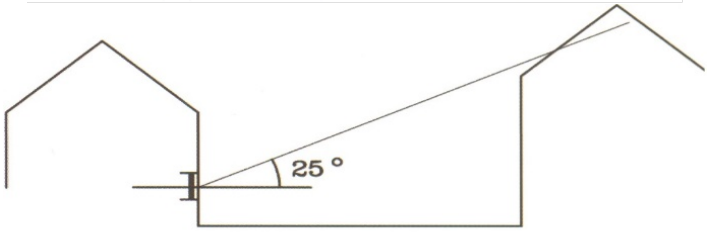


The BRE guide contains preliminary 25°and 45° tests. In this instance, the 25° test is the appropriate test, since No. 4 Bembridge Drive has a main window serving a habitable room which looks out directly onto the proposed site.

The diagrams below help to explain the application of the 25° test. The first step is to draw a section in a plane perpendicular to each affected main window of the existing building. If 'any part' of the new development crosses a line drawn at 25° from the horizontal, from the centre of the window, more detailed checks are needed. In order to pass the test, the whole development must be below the 25° line, not just the part of the development which is directly perpendicular to the centre of the window.

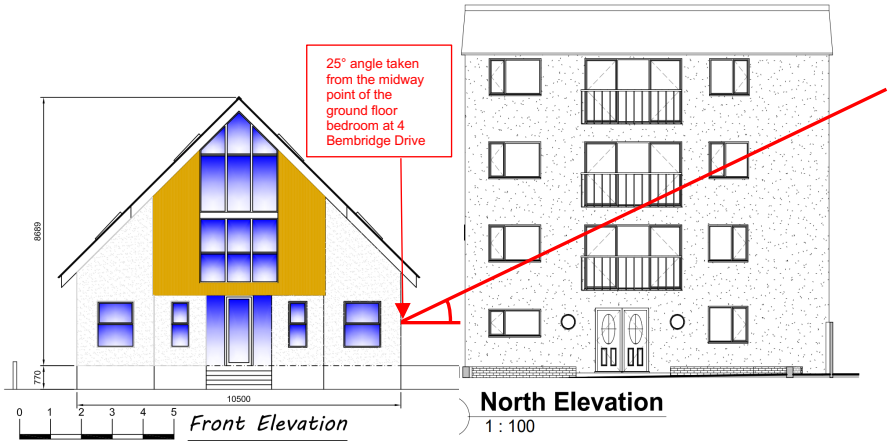


Daylight and sunlight likely to be acceptable



Detailed daylight and sunlight study required

The application drawings for the proposed extension to No. 2 Bembridge Drive do not include drawings showing the relationship of the proposal with the ground floor window at No. 4 Bembridge Drive. However, we have been able to plot the approximate position of the centre of the bedroom window at No. 4 Bembridge Drive on the proposed front elevation drawing of No. 2 Bembridge Drive.



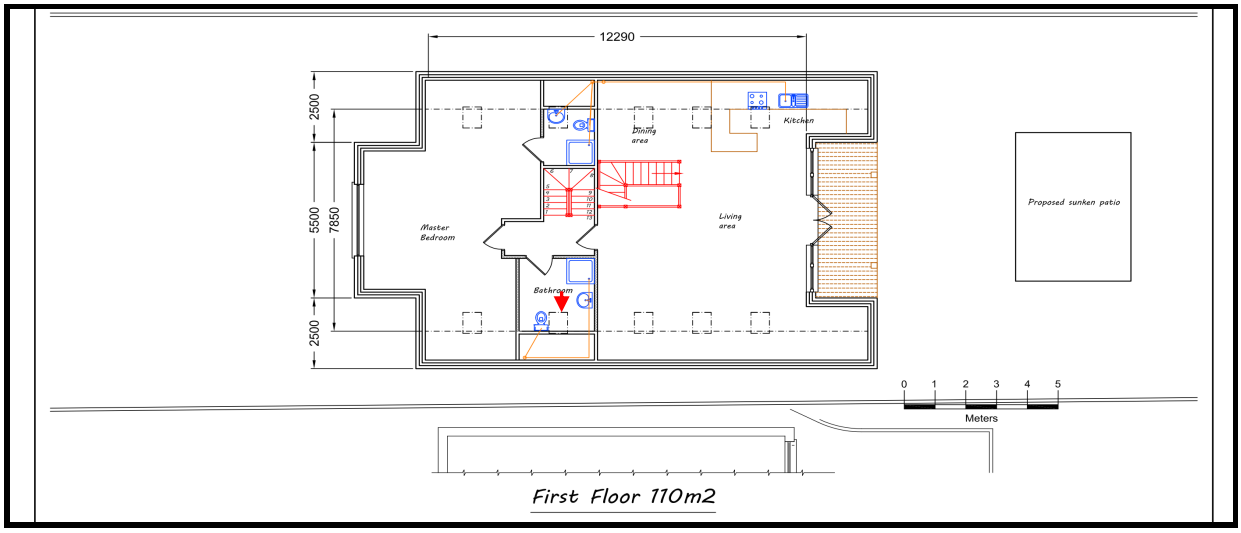
It is evident from the drawing below that the proposed extension does not satisfy the 25° test. The 25° angle, drawn in red, extends through the proposed extension at No. 2 Bembridge

Drive. It can also be seen from the drawing that the 25° angle already extends through the existing first floor at No. 2 Bembridge Drive. The light received by the ground floor bedroom, and cloakroom at No. 4 Bembridge Drive is already obstructed. The proposed two storey side extension will restrict the light further.

Although the proposed extension does not satisfy the preliminary 25° test in relation to the bedroom window, it does not automatically follow that daylight and sunlight will be adversely affected. Breaching the test signifies that further detailed tests are needed. We would therefore expect the council to require the applicant to carry out an assessment in accordance with the BRE guide. The assessment should include the following tests:

- Vertical Sky Component
- Daylight Distribution
- Annual Probable Sunlight Hours
- Overshadowing to Gardens and Open Spaces
- Sun path diagrams/shadow plots

For your additional reference, I have also enclosed the first floor plan at No. 4 Bembridge Drive. You will note that the bathroom is reliant on the light it receives from the skylight window serving the room.



Conclusion

On behalf of [redacted] we request that no decision is made in favour of the application until:

1) the applicant has submitted a complete and accurate daylight and sunlight assessment prepared in accordance with the BRE guide, and

2) the assessment shows that the proposed design; or amended design, complies with the BRE guide.

Should you have any queries, or would like to discuss the above concerns, please do not hesitate to contact me.

Yours sincerely



Shirley Ellis LLB (Hons)
Senior Right of Light Surveyor
Direct Dial: 01268 208621
Email: shirley.ellis@right-of-light.co.uk